

No. 3093

8

United States

Circuit Court of Appeals

For the Ninth Circuit.

GRAYS HARBOR TUG BOAT COMPANY, a
Corporation,

Appellant,

vs.

R. PETERSEN,

Appellee.

Apostles on Appeal.

Upon Appeal from the United States District Court
for the Western District of Washington,
Southern Division.

FILED
JAN 11 1918
F. D. MENDONSA,
CLERK

United States
Circuit Court of Appeals
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

IN ADMIRALTY—# 858.

R. PETERSON,

Libelant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY, a
Corporation, et al.,

Respondents.

Praeceptum for Apostles.

To the Clerk of the Above-entitled Court:

You will please prepare and send up to the United States Circuit Court of Appeals for the Ninth Circuit, apostles on appeal, within thirty days after the date of giving notice of appeal, said apostles to contain the following:

1.

A caption exhibiting the proper style of the court and the cause; and a statement showing the time of the commencement of this suit; the names of the parties, setting forth the original parties; the several dates when the respective pleadings were filed, and that there was no property attached or arrested; the different times when proceedings were had before the Court; the name of the Judge hearing the same; the date of the entry of the final decree; and the date when the notice of appeal was filed.

2.

All the pleadings. [1*]

3.

The stipulated record of the testimony and the maps and charts filed as exhibits in the case, with the proper certifications of the clerk.

4.

All opinions of the Court, whether upon interlocutory questions or finally deciding the cause.

5.

The final decree and the notice of the appeal.

6.

Assignment of error.

MORGAN and BREWER,

Proctors of the Respondent and Appellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 22, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [2]

In the United States District Court for the Western District of Washington, Southern Division.

No. 858.

R. PETERSEN,

Libellant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

*Page-number appearing at foot of page of original certified Apostles on Appeal.

Names and Addresses of Counsel.

Messrs. PAGE, McCUTCHEON, KNIGHT & OLNEY, Merchants Exchange Building, San Francisco, California,

IRA A. CAMPBELL, Esquire, Merchants Exchange Building, San Francisco, California,

E. C. HANFORD, Esquire, Colman Building, Seattle, Washington,

C. H. HANFORD, Esquire, Colman Building, Seattle, Washington,

Proctors for Libellant.

Messrs. MORGAN & BREWER, Hoquiam Washington,

Proctors for Respondent. [3]

Statement Under Admiralty Rule 4.

TIME OF COMMENCEMENT OF CAUSE.

December 7, 1910.

NAMES OF PARTIES.

R. Peterson, master of the ship "Jane L. Stanford," acting for himself, the owners and all parties in interest, libellant, and Gray's Harbor Tug Boat Company, a corporation, respondent.

DATES WHEN PLEADINGS WERE FILED.

Libel, with interrogatories propounded to respondent by libellant attached, on December 7, 1910.

Exceptions to libel *in personam* and answer to said libel, with answers to interrogatories attached, on January 4, 1911.

Exceptions to answers to interrogatories, on January 26, 1911.

Supplementary answer to interrogatory No. 3 pro-
pounded by libellant, on April 21, 1911.

ISSUANCE OF PROCESS AND SERVICE THEREON.

On December 7, 1910, upon the filing of the libel, citation was duly issued under the seal of the Court, which citation was afterwards, to wit, on the 9th day of December, 1910, returned and filed in court by the United States Marshal, with the following return of service thereon:

“I hereby certify that I served the within Citation at Hoquiam, Washington, on the 7th day of December, 1910, by then and there delivering to and leaving with E. O. McGlauffin, as manager of said defendant, Gray’s Harbor Tug Boat Company, a corporation, at said time and place, a duly certified copy thereof. [4]

C. B. HOPKINS,
United States Marshal.
By H. J. DOTEN,
Deputy Marshal.

MARSHAL’S FEES.

| | |
|-----------------|------|
| Service, | 2.00 |
| Expenses, | 8.90 |

Total Charge 10.90”

The respondent was not arrested, no bail was taken, no property was attached or arrested.

REFERENCE TO COMMISSIONER.

No question of fact was referred to any commis-

sioner or commissioners, but testimony was taken before commissioners and filed on the dates below stated:

December 27, 1910. Report of testimony taken before G. H. Marsh, United States Commissioner, of the following witnesses. R. Petersen, O. F. Thomsen, Fred Johnson and Albert Crowe on the part of libellant.

March 29, 1915. Report of testimony taken before Dan Pearsall, United States Commissioner, of the following witnesses: Mrs. Lillian Peterson and Captain R. Peterson on behalf of libellant, and Chris Olson, George Chicone, C. L. Davidson, Otto Rohme, G. B. Sanborn, H. K. Johnson and William King on behalf of respondent.

June 28, 1917. Report of testimony taken before A. C. Bowman, United States Commissioner, of Robert Petersen on behalf of libellant.

August 25, 1917. Report of testimony taken before Francis [5] Krull, United States Commissioner, of witnesses E. Alexander and Robert H. Lee, on behalf of libellant.

TRIAL.

On March 2, 1917, said cause came on for trial and hearing before Honorable Edward E. Cushman, one of the Judges of said court, upon the testimony then taken and filed herein together with the exhibits offered by the respective parties. Proctors for the respective parties appeared and argued said cause in open court and thereafter submitted written briefs to the Court. Thereafter on April 16, 1917, said Judge before whom said cause was tried and heard

duly filed his memorandum decision on the liability in said cause.

Thereafter in pursuance of a motion by libellant for a hearing on the amount of damages and order setting the same filed herein on June 13, 1917, a further hearing was had on July 9, 1917, before the Honorable Edward E. Cushman, Judge as aforesaid, upon testimony filed upon that question and the testimony of Arthur B. Hedges for libellant and Fred A. Ballin for respondent, taken in open court and afterwards reduced to writing and filed on the 16th day of July, 1917. Proctors for the respective parties appeared and argued said question of the amount of damages in open court, and later submitted written briefs to the court. On October 11, 1917, said Judge duly filed his memorandum decision on the amount of damages in said cause.

DECREE.

Decree in accordance with said decisions was made, filed and entered on October 19, 1917, and the same date an order was made, [6] filed and entered, fixing the amount of stay bond at \$12,500.00.

NOTICE OF APPEAL.

Notice of appeal was filed on November 22, 1917, and thereafter on November 23, 1917, was served upon C. H. Hanford, proctor for libellant.

On November 22, 1917, assignment of errors, appeal bond in the sum of \$250.00 and stay bond in the sum of \$12,500.00, both approved by the Court, were also filed. [7]

*In the United States District Court for the Western
District of Washington, Western Division.*

IN ADMIRALTY—No. 858.

R. PETERSEN,

Libellant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

Libel In Personam.

To the Honorable Judge of the Above-entitled
Court:

The libel of R. Petersen, master of the American barkentine "Jane L. Stanford," against the Gray's Harbor Tug Boat Company, in a cause of damages, civil and maritime, alleges as follows:

I.

That libellant, R. Petersen, is and was during all times mentioned herein master of the barkentine "Jane L. Stanford," an American vessel, and brings this libel against said respondent for and on behalf of the owners of said vessel and her cargo.

II.

That respondent, Gray's Harbor Tug Boat Company, is a corporation, but the state under the laws of which said corporation is organized is unknown to libellant, and libellant therefore demands strict proof of the same.

III.

That heretofore, on or about the 5th day of October, [8] 1910, the said barkentine, after being loaded with a full cargo of lumber, left the port of Aberdeen bound for the port of Brisbane, in tow of one of the tugs belonging to respondent, which tug was to tow said barkentine to sea; that upon arriving at the bar at the entrance of Gray's Harbor the master of said tug found the sea too heavy to cross said bar, and thereupon anchored said barkentine inside said bar, where she waited for fair weather until about the 25th or 26th day of October, 1910; that shortly after 1 P. M. of said latter day, respondent's tug "Cudihy" informed the master of said barkentine that the conditions on the bar were such that he could safely tow said vessel to sea, and thereupon a hawser was passed, and said tug, with said barkentine in tow, proceeded down through the channel across said bar to the open sea; that a heavy swell and sea was breaking on said bar, and in crossing the same said barkentine struck heavily thereon and by reason thereof sprung a leak necessitating her bearing away for the Columbia River, where, on the following day, she was picked up by a tug and towed to the port of Astoria, and thence to the drydock at the port of St. John's; that thereafter her cargo was partially discharged and the vessel was docked in the drydock belonging to the port of Portland and repairs of said damage resulting from said striking of said bar were made.

IV.

That the master of said tug was incompetent, in

that he was a man of intemperate habits and unfamiliar with the channel through which said barkentine was towed across said bar, which channel had recently formed and through which said master of said tug had never before navigated; that said barkentine, so far as the act and time of towing the same across said bar, was under the sole control of respondent, and said master of respondent's said tug negligently and carelessly [9] towed said barkentine to sea across said bar when the sea breakers on said bar were too heavy, and the depth of water on said bar too shallow to enable said barkentine to cross said bar in safety, and by reason thereof said barkentine struck on said bar and was badly damaged, as aforesaid.

V.

That by reason of said damage resulting from said striking of said bar, repairs to the bottom of said vessel were necessary, the total cost of which will approximate the sum of \$2,000, the exact amount of which is unknown to libellant; the cost of discharging and reloading said vessel will be about the sum of \$2,000, the exact amount of which is unknown to libellant; the cost of towing said barkentine into the Columbia River, to the port of St. Johns and return to sea, will be approximately the sum of \$600, the exact amount of which is unknown to libellant; that further expenses have been and will be incurred, by way of wages and provisions to the crew, in the approximate sum of \$1,000 and said barkentine will be detained in the prosecution of her voyage about forty-six days, to her loss and damage

in the approximate sum of \$3,000; that the total amount of said loss and damage to libellant, by reason of the striking of said bar, is at present unknown to libellant, owing to the noncompletion of the repairs to said barkentine, but libellant believes the same will amount to the sum of \$10,000.

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that process in due form of law, [10] according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the respondent, a corporation, owner of said tug "Cudihy," and that they may be required to answer on oath all and singular the matters aforesaid, and that this Honorable Court may be pleased to decree the payment of the amount due, as aforesaid, with interest and costs, and that libellant may have such other and further relief as in law and justice they are entitled to receive.

R. PETERSEN.

By IRA A. CAMPBELL,

His Proctor.

PAGE, McCUTCHEON, KNIGHT & OLNEY,
IRA A. CAMPBELL,

Proctors for Libellant.

State of Washington,
County of King,—ss.

Ira A. Campbell, being first duly sworn, on oath deposes and says: That he is one of the proctors for

libellant herein; that he has read the foregoing libel, knows the contents thereof, and believes the same to be true; that he makes this verification for and on behalf of libellant, for the reason that said libellant is not within the jurisdiction of this Honorable Court.

[Notarial Seal]

IRA A. CAMPBELL.

Subscribed and sworn to before me this 7th day of December, 1910.

B. M. WRIGHT,

Notary Public in and for the State of Washington,
Residing at Tacoma.

Filed U. S. District Court, Western District of Washington. Dec. 7, 1910. R. M. Hopkins, Clerk.
By Sam'l D. Bridges, Deputy. [11]

**Interrogatories Propounded to Respondent by
Libellant.**

Int. 1: When was the channel through which the barkentine "Stanford" was towed by the tug "Cudihy" formed?

Int. 2: What was the depth of water in said channel at the time said barkentine was towed to sea by said tug "Cudihy" and struck said bar?

Int. 3: Was it high tide at the time? If not, how long before high tide was it?

Int. 4: How long had the master of the tug "Cudihy" been in your employment prior to the time he towed said barkentine to sea?

Int. 5: On what date was he employed by you?

Int. 6: Had he ever towed a vessel to sea prior to the "Stanford" through the channel through which the "Stanford" was towed?

Int. 7: Is it not a fact that the master of the tug was a man of intemperate habits?

Int. 8: Do you know whether or not he had been discharged from the Government service for intemperance shortly before he took command of the tug "Cudihy," just previous to his towing said barkentine to sea? [12]

Int. 9: Had not the barkentine "Stanford" laid inside the Gray's Harbor bar approximately two weeks awaiting an opportunity when she could be towed across said bar by your tugs with safety?

PAGE, McCUTCHEON, KNIGHT & OLNEY,
IRA A. CAMPBELL,

Proctors for Libellant.

Filed U. S. District Court, Western District of Washington. Dec. 7, 1910. R. M. Hopkins, Clerk.
By Sam'l D. Bridges, Deputy. [13]

*In the District Court of the United States for the
Western District of Washington, Western Di-
vision.*

No. 858.

R. PETERSON,

Libellant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY,
Respondent.

Exceptions to Libel in Personam and Answer to Said Libel, as Amended.

Comes now the respondent and excepts and objects to the libel *in personam* heretofore filed against it and served upon it for the reason that the same does not state facts sufficient in law to constitute a cause of action against this respondent and especially in this: that no sufficient charge of neglect nor any charge of fault or neglect was made therein against this respondent.

Answer.

And for further answer to said libel this respondent in answer to paragraph one (1) alleges that it has no knowledge or information as to the matters and things set up in said paragraph, and, therefore, demands strict proof of the same.

II.

In answer to paragraph two (2) of said libel this respondent admits that it is a corporation and alleges that it is a corporation organized under the laws of the State of Washington, and has its principal place of business in the city of Hoquiam, Chehalis County, Washington. [14]

III.

In answer to paragraph three (3) of said libel, this respondent alleges that it has no information as to the matters and things set up, particularly in lines 32 and 33 on page 1 and in lines 1, 2, and 3 on page 2 of said libel.

This respondent admits that upon arriving at the

bar the barkentine "Jane L. Stanford" was anchored in a safe place; that she there remained until about the 25th day of October, 1910; and that about the date last alleged this respondent's tug "John Cudahy" made fast to said barkentine and with her in tow proceeded across the bar to open sea. This respondent admits that there was a heavy swell and sea breaking on said bar, but alleges that such sea at the time of taking the vessel in tow and up to the time the vessel reached the bar was not extraordinarily heavy or unusual and was, in fact, safe for the purpose of towing out any vessel and particularly the "Jane L. Stanford," and as to the remainder of said paragraph this respondent asserts that it has no knowledge or information except as heretofore specifically admitted and, therefore, denies the same and demands strict proof thereof.

IV.

Answering paragraph four (4) of said libel, this respondent denies the same and the whole thereof.

V.

Answering paragraph five (5) of said libel, this respondent denies the same and the whole thereof.

AND FOR FURTHER ANSWER TO SAID LIBEL this respondent alleges: [15]

That on or about the date alleged in said libel, this respondent engaged for hire to tow the barkentine "Jane L. Stanford" to sea over the Grays Harbor bar; that such contract was the usual and ordinary towage contract and agreement and without any additional stipulations or warranties; that at the time chosen by its master to tow the vessel to sea, the con-

dition of the bar was good and safe for all purposes connected with the towing of vessels of the size and nature of the "Jane L. Stanford" to sea. That its tug "John Cudahy" was in good condition and suitable for that purpose and that the master of said tug Chris Olson, was a competent and experienced master authorized by the proper authorities to act as master of bar tugs on Grays Harbor and that for many years he had been engaged in towing over the Grays Harbor bar as master of tugboats; that the time and place selected by him for towing such vessel were proper and suitable and were made in the exercise of his best judgment and that this respondent and said master were without fault or neglect in undertaking and prosecuting such towage contract, and while proceeding to sea as before alleged and at about the time the "Stanford" had reached the shallowest portion of the bar, three extraordinarily heavy seas struck the vessel and that if the vessel struck upon the bar, such striking was caused by the fact that such extraordinarily seas reached the bar at that exact moment and that if any damage was caused to the vessel, it was caused by a peril of the sea and not through any fault or neglect of this respondent or its master; that no foresight or precaution which might have been examined or taken by this respondent or its master could foresee or anticipate such a contingency and that no action was possible to the master of the tug to prevent such injury after he became aware such seas were approaching. [16] That this respondent, the owner of the tug "John Cudahy" had prior to the time of such acci-

dent and at all times herein mentioned, exercised due diligence and all proper diligence to make its tug, the said "John Cudahy," in all respects seaworthy, and had at all times properly manned such tug and had properly equipped and supplied such tug, and that if any loss accrued to the libellant, such loss accrued from dangers of the sea or the acts of God and not from fault and errors and neglect of this respondent. This respondent therefore claims exemption of the laws of the United States of America in such cases made and provided.

WHEREFORE, having fully answered this respondent prays that it may go hence without day; that it may have its costs and disbursements to be taxed against the libellant and such other and further relief as to the Court may seem just.

MORGAN & BREWER,
Proctors for Respondents.

State of Washington,
County of Chehalis,—ss.

E. O. McGlauffin, being first duly sworn, upon oath, deposes and says: That he is the manager of the Grays Harbor Tugboat Company, respondent herein; that he has read the foregoing instrument, knows the contents thereof and that the same is true as he verily believes.

E. O. McGLAUFFLIN.

Subscribed and sworn to before me this 31 day of December, A. D. 1910.

[Seal of Notary] WALTER C. GREGG,
Notary Public in and for the State of Washington,
Residing at Hoquiam in said State.

Filed U. S. District Court, Western District of Washington. Jan. 4, 1911. R. M. Hopkins, Clerk. By Sam'l D. Bridges, Deputy. [17]

In the United States District Court for the Western District of Washington, Western Division.

IN ADMIRALTY—No. 858.

R. PETERSON,

Libellant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY, a Corporation,
Respondent.

Answer of E. O. McGlauffin to Interrogatories.

United States of America,
Western District of Washington,—ss.

E. O. McGlauffin, being duly sworn, upon oath deposes and says: That he is the manager of the respondent herein Grays Harbor Tug Boat Company, and on its behalf answers the interrogatories propounded herein by the libellant as follows:

For answer to interrogatory one, he saith: That the Grays Harbor Tug Boat Company have been using the south channel for towing about eight months.

For answer to interrogatory two he saith: That he is informed and believes that at the time and place said barkentine was towed to sea by the tug "Cudahy" the depth of the water was about 27 feet.

For answer to interrogatory three he saith: That the said barkentine was towed to sea about 5 o'clock P. M. and that the tide was at the time mentioned, at about its greatest height for that day, and was at the time at the highest water suitable for towing purposes.

For answer to interrogatory four he saith: That the [18] master of the tug "Cudahy" had been in the employ of the Grays Harbor Tug Boat Company at various times for some years; that he was employed by the tugboat company during the months of April, May, June, July, in the year 1910, but he did not work during the months of August and September and during a part of October.

For answer to interrogatory five, he saith: That the master of the tug "Cudahy" was last employed by us on or about the 19th of October, 1910.

For answer to interrogatory six, he saith: That the master of the tug "Cudahy" had towed vessels to sea prior to the time he towed the "Stanford" and through the same channel.

For answer to interrogatory seven, he saith: That during the time the master of the tug "Cudahy" was in our employ and to the best of our information, was a man of temperate habits.

For answer to interrogatory eight, he saith: That he was not discharged from the Government's employ, but voluntarily terminated his employ.

For answer to interrogatory nine, he saith: That the barkentine "Stanford" had laid inside the bar approximately three weeks awaiting a time which

was in the judgment of captains of respondent's tugs suitable for towing to sea.

E. O. McGLAUFLIN.

Subscribed and sworn to before me this 31 day of December, A. D. 1910.

[Seal of Notary.] WALTER C. GREGG,
Notary Public in and for the State of Washington,
Residing at Hoquiam in said State.

Filed U. S. District Court, Western District of Washington. Jan. 4, 1911. R. M. Hopkins, Clerk. By Sam'l D. Bridges, Deputy. [19]

*In the United States District Court for the Western
District of Washington, Western Division.*

IN ADMIRALTY—No. 858.

R. PETERSEN,

Libellant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a Corporation,

Respondent.

Exceptions to Answers to Interrogatories.

Comes now the above-named libellant and excepts to the answers of the respondent to the interrogatories addressed to it in libellant's libel herein as follows:

First. Libellant excepts to the answer to first interrogatory, for the reason that instead of answering

said interrogatory fully, directly and positively, it answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer when the channel referred to was formed, and that said answer is impertinent and scandalous.

Second. Libellant excepts to the answer to the third interrogatory, for the reason that instead of answering said interrogatory fully, directly and positively, it answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer whether or not it was high tide, and if not, how long before high tide it was at the time the barkentine "Stanford" was towed to sea, and that said answer is impertinent and scandalous.

Third. Libellant excepts to the answer to the fourth interrogatory for the reason that instead of answering said interrogatory fully, directly and positively, it answers the same evasively [20] and indirectly, so far as it does answer the same, and omits wholly to answer how long the master of the "Cudahy" had been in the employ of respondent prior to the time he towed said barkentine to sea.

Fourth. Libellant excepts to the answer to the sixth interrogatory for the reason that said answer instead of answering the interrogatory, fully, positively and directly, answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer whether or not said master had ever before towed vessels to sea through the same channel that the "Stanford" was towed by him.

Fifth. Libellant excepts to the answer to the

seventh interrogatory for the reason that instead of answering said interrogatory fully, positively and directly, it answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer whether or not said master was a man of intemperate habits.

PAGE, McCUTCHEON, KNIGHT & OLNEY, and

IRA A. CAMPBELL and

E. C. HANFORD,

Proctors for Libellant.

Filed U. S. District Court, Western District of Washington. Jan. 26, 1911. R. M. Hopkins, Clerk. By Sam'l D. Bridges, Deputy. [21]

In the District Court of the United States for the Western District of Washington, Western Division.

IN ADMIRALTY—No. 858.

R. PETERSON,

Libellant,

vs.

GRAYS HARBOR TUG BOAT COMPANY,
Respondent.

**Supplement Answers to Interrogatory No. 3
Propounded by the Libellant.**

United States of America,
Western District of Washington,—ss.

Comes now E. O. McGlauffin and by leave of Court

first had, in answer to Interrogatory No. 3 propounded to respondent by libellant, he says:

That at the time the "Jane L. Stanford" was towed to sea by the tug "Cudahy" it was high tide on the Grays Harbor Bar.

E. O. McGLAUFLIN.

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

[Seal of Notary] L. H. BREWER,
Notary Public in and for the State of Washington,
Residing at Hoquiam.

United States of America,
Western District of Washington,—ss.

M. M. Kueneke, being first duly sworn, upon oath deposes and says: That she is a resident of the county of Chehalis, State of Washington over the age of twenty-one years, and was at the time of making the service herein; that on the 20th day of April, [22] A. D. 1911, she served a copy of the within instrument, Supplement Answers to Interrogatory No. 3, Propounded by the Libellant, on the persons named therein, and in the manner hereinafter specified, to wit: By depositing in the United States post-office in the city of Hoquiam, Chehalis County, Washington, a true copy of the within instrument enclosed in a seal envelope with postage duly paid thereon addressed to Mr. E. C. Hanford, Burke Bldg., Seattle, Washington; that there is a daily mail service between Hoquiam and Seattle.

Dated at Hoquiam, Washington this 20th day of April, A. D. 1911.

M. M. KUENEKE.

Subscribed and sworn to before me this 20th day of April, A. D. 1911.

[Seal of Notary] L. H. BREWER,
Notary Public in and for the State of Washington,
Residing at Hoquiam, Washington.

Filed U. S. District Court, Western District of Washington. Apr. 21, 1911. R. M. Hopkins, Clerk.
By Sam'l D. Bridges, Deputy. [23]

*In the United States District Court for the Western
District of Washington, Western Division
(Now Southern Division.)*

IN ADMIRALTY—No. 858.

R. PETERSON,

Libellant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

Motion for Correction of Answer, etc.

Comes now the respondent and moves the Court for an order allowing it to correct certain manifest clerical errors in the last three lines of its answer, by interlineation in said answer, by interlining and amending the same as follows:

By changing the second word "or" in the third line from the last to the words "and not"; and in changing the word "and" in said line to the word "of," and by inserting between the word "respondent"

and the word "therefore" in the second line from the last, the words "this respondent," and inserting in the last line of said answer and immediately preceding the prayer, in the place of "the State of Washington," the words, "the United States of America," so that said lines shall read as follows:

"And that if any loss accrued to the libellant, such loss accrued from dangers of the sea or the acts of God and not from the fault and error and neglect of this respondent and this respondent therefore claims exemption of the laws of the United States of America in such cases made and provided."

MORGAN & BREWER,

Proctors for Respondent. [24]

United States of America,

Western District of Washington,—ss.

F. L. Morgan, being first duly sworn, upon oath, deposes and says: That he is a resident of the State of Washington, and was over the age of twenty-one years on the 12th day of February, A. D. 1917, on which day he served the within Motion on the persons named therein and in the manner hereinafter specified, to wit: *On* C. H. Hanford, attorney of record for libellant, by depositing in the United States postoffice in the city of Hoquiam, Grays Harbor County, Wash., enclosed in a sealed envelope, properly addressed to C. H. Hanford, Colman Bldg., Seattle, Washington, with postage duly prepaid thereon, a true copy of the within motion for leave to amend answer; that there is a daily mail service

between the cities of Hoquiam, Washington, and Seattle, Washington.

Dated at Hoquiam, Washington, on this 13th day of February, A. D. 1917.

F. L. MORGAN,

Subscribed and sworn to before me this 13th day of February, A. D. 1917.

[Notarial Seal]

M. M. KUENEKE,

Notary Public in and for the State of Washington,
Residing at Hoquiam.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 14, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [25]

Minutes of Court—March 2, 1917—Order Granting Motion for Correction of Answer.

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma, on the 2d day of March, 1917, the Honorable EDWARD E. CUSHMAN, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the journal of said court, to wit:

No. 858.

R. PETERSEN,

vs.

GRAYS HARBOR TUG BOAT CO.

It is now ordered that respondent's motion, filed herein February 14, 1917, to amend its answer, be granted. * * * [26]

*In the District Court of the United States, Western
District of Washington, Southern Division.*

IN ADMIRALTY—No. 858.

R. PETERSEN,

Libellant,

vs.

GRAY'S HARBOR TUG BOAT COMPANY,
Respondent.

Memorandum Decision.

Filed April 16, 1917.

PAGE, McCUTCHEON, KNIGHT, OLNEY and
IRA A. CAMPBELL, E. C. HANFORD, for
Libellant.

MORGAN & BREWER, for Respondent.

CUSHMAN, District Judge.

This suit is for damages against the owner of the tug "Cudahy" on account of the striking of the "Jane L. Stanford," spoken of hereafter as the "Stanford," on the Gray's Harbor bar, while being towed, outbound, by the tug, October 25, 1910. The fault alleged in the libel is that the tug's master was of intemperate habits and unfamiliar with the channel across the bar, which, it is alleged, he had never navigated before. Negligence is also charged

against him in crossing the bar when the breakers were too heavy and the depth of water too little.

The charge of intemperance is not sufficiently made out.

The channel followed on this occasion in crossing the bar had been used during, and since the preceding summer. The captain of the tug had towed vessels through it which were larger and [27] of equal draft to the "Stanford." The "Stanford" was the first tow taken over the bar by the captain of the tug since the preceding summer, probably since July, although the evidence is not clear.

For about twenty days before the accident to the "Stanford," there had been a storm with the wind from the south or southwest. This storm had been of sufficient severity to prevent towing over the bar during this time. The "Stanford" was loaded with lumber and had been towed down near the bar and had lain at anchor for about twenty days. Her draft so loaded was 19 feet, 10 inches forward and 20 feet, 2 inches aft.

On the morning of October 25th, the tug went out to afford her captain an opportunity to observe the bar, and as he returned the captain testifies that he reported to the captain of the "Stanford":

"A. Well, there were several vessels bar bound there, ready to go out and there were three tugs or four but they were all down at the bar, looking at the bar and came back and I had been down once and looked at it and it didn't look bad at one end but the other it didn't look like a safe proposition and I went back

and waited for more water and went back, I wanted to satisfy myself and I went back and looked at it the second time and at that time the bar was passable as I thought and I went back and hooked onto the vessel. * * *

“Q. What was the condition of the bar when you went down in the morning to look at it?

“A. In the morning it was low tide and when we first looked at it it was ebbing, the last of the ebb when I looked at it the first time and the second time I looked at it it was flood, that makes quite a difference. [28]

“Q. How much of a difference was it breaking the first time?

“A. Just what we call the ebb tide, breaking like we would see on the river where there is a strong ebb tide running and the wind blowing the other way, that kind of a chuck on, and when the tide turns and the wind goes the same way that all disappears.

The captain of the “Stanford’s” version of this is as follows:

“A. Spoke to him in the morning when he went down to the bar and came back by up stern of our vessel; I spoke to him again and asked him how the bar was; he told me that it didn’t look very favorable, it was rather lumpy, but he says it might smoothen down this evening when the flood sets in.

“Q. Then you spoke to him again that day?

“A. Yes, he hung up to us about 1 o’clock; at

1 o'clock he went down to watch the bar again; he went down as far as, I can't say exactly, down to the end of the black buoy inside of the bar; Captain Johnson and Captain Ericson of the other two steamers were starting to tow the other two vessels out and he came back and he hollered to take—he hollered out to us to take his hawser and heave up.”

Not over ten or fifteen minutes were necessary, or taken in actually crossing the bar. There is such a conflict in the evidence just how long before flood tide this towing was undertaken that it cannot be determined with reasonable certainty. Respondent's [29] evidence is to the effect that it was one hour before flood tide and that of libelant that it was two hours before.

Immediately preceding the “Cudahy” and her tow, two other of respondent's tugs took out tows of lighter draft without mishap. The master of one of these tugs testified:

“Q. Did you know that the “Cudahy” started out?

“A. Yes, sir.

“Q. You could see her? A. Yes, sir.

“Q. Did you signal to her with your whistle?

“A. I whistled to her; yes, sir.

“Q. What did you whistle for?

“A. Well, I whistled; I thought there was a swell on and they all signal to me lots of times when too much swell on, but I go on about my business.

Upon this point the master of the "Cudahy" says:

"Q. Suppose that a captain on one of the other tugs for the same company had seen the bar ahead of you and told you the bar was not suitable for towing out would you have followed his advice, his judgment * * * ?

"A. If I was not able to see the bar I might have taken his signal but if I was able to see the bar I would have gone on my own judgment, I believe a man should use his own judgment about that.

The captain of the "Stanford" says:

"Q. Captain, what, if anything, occurred while you were crossing this bar?

"A. Well, fifteen minutes after we rounded that red channel *bouy* we struck upon bottom heavy, very heavy, aft and forward.

"Q. You say you struck ground, did you stop?

"A. No, a vessel don't stop, see you are going, are towing out and you see a heavy sea comes down and she never stops, she continues going; she struck down.

"Q. Did she strike first aft? [30]

"A. First aft and then forward. * * * "

The captain of the "Stanford" testifies that a few seconds before the soundings showed four and a half fathoms, 27 feet, which, without deduction, would have allowed over six feet of water under his vessel. This sounding was probably made before reaching the shallowest point on the bar and allowance should be made for the affect of the rise of

swells and of the sea on the slack lead line. It is also significant that, although it is shown that soundings were taken upon the tug, there is no evidence as to what they showed.

Captain Crowe, surveyor of the San Francisco Board of Underwriters, who examined the "Stanford" as soon as she was drydocked at Portland, after the accident, testified as to her condition, as follows:

"A. I found the vessel, after putting her on the drydock, to have apparently hit with her heel on a sandy bottom; about 30 feet of the outer shoe and ten feet of the inner shoe on the heel were torn off the whole length, the whole after end of the vessel, extending to about one-third of her length; the vessel was all shaken in the seams; the butts along the bottom and all over the vessel were more or less started; the keel in several places on the places mentioned before, the pieces of shoe split off and in some places cut in deep enough to take off or scalp off the keel; in the vicinity of the foremast, underneath the foremast on the port side there were two pretty deep cuts and the planks bruised and cut in about two and a quarter inches deep. The keel right opposite that place was slightly damaged, and the shoe for a distance of about ten feet badly split up, and quite a portion of it gone. Right across the starboard side of the planks there was one bad bruise and a score of considerable length; these latter damages were fresh and had apparently been made by the vessel

going upon sharp rocks; also places damaged along the keel to about within 30 feet of her heel; the stern post was found set about one-fourth of an inch in the ship's counter; rudder not working true, that being swung, and the steam pump out of order. I think that comprises about the damage.

“Q. Did you make any statement, Captain, about the butts?”

“A. The butts on the bottom and more or less all over the vessel every butt in a third of the length of the aft end of the vessel, every seam were shaken, and nearly all the others were more or less shaken; of course, [31] some may not have any visible bruise on it but the vessel was shaken all over.”

The captain, engineer, fireman and deck-hand on the “Cudahy” testified that there was nothing observed by them to indicate that the “Stanford” struck on the bar; that she did not stop; nor did her mast or rigging shake, nor was any shock or jar felt upon the tug. The captain of the tug testifies to the use, at that time, of a towing machine which would pay out the line automatically. This would account for no shock being felt upon the tug. The engineer of the tug denies the use of such an automatic machine at that time, but both of these witnesses being for the respondent, the Court cannot conclude—in this condition of the testimony—with any degree of certainty that the shock would have been felt upon the tug.

It is shown that, while the “Stanford” was lying

inside the bar, several days before being towed out to sea, she went aground, with a southwest wind blowing. There is a conflict in the testimony concerning whether she was pounding, while aground, and, if so, to what extent, or for what length of time. She had to be pulled off by a tug.

It is contended by respondent that the injuries to the "Stanford" were caused by this grounding and that she did not strike upon the bar. Certain cuts upon the keel are described by Captain Crowe:

"Underneath the foremast on the port side there were two pretty deep cuts and the planks bruised and cut in about two and a quarter inches deep."

There is evidence tending to show these cuts to have been five or six feet above the shoe. This injury being so high above the shoe, probably is accounted for by the fact that the "Stanford" was in the trough of the sea at the time she struck and was not on an even keel.

On account of the slight list of the "Stanford" at the time of her going aground inside the bar, it is difficult to see how these cuts upon the hull could have been caused by her lying upon [32] either of her anchors. No explanation is made of how, if, drifting before the wind, she dragged her anchors, she could possibly bring up and lie upon either of them.

Although respondent's witnesses testify to the "Stanford's" pounding on the sandy bottom while aground inside the bar, the log of the tug of respondent which pulled her off has the following entry:

“October 17th, 6 A. M., left Hoquiam for sea, towed boat ‘Jane L. Stanford’ from off *mud* to safe anchorage.”

I am convinced that the “Stanford” struck upon the bar as claimed, not only from the positive testimony of the captain of the “Stanford,” the mate and others upon her, which witnesses were, of course, in a better position to know whether she actually struck or not than those upon the tug (The Florence, 88 Fed. 302), but from the fact that it is very unlikely, if the “Stanford” was leaking from the grounding inside the bar, as badly as it is shown she was leaking after she crossed the bar, the captain would have permitted himself to be towed out to sea with his wife and five years old child.

The chief engineer on one of respondent’s tugs, the “Traveler,” testifies:

“Q. Do you recall furnishing them with an extraordinary supply of water?

“A. Yes, we gave them water twice, I think, I am pretty positive we gave them water twice.

“Q. What was said at that time about this matter of supplying them with this extraordinary amount of water, what was said to you as a reason for this extraordinary supply of water?

“A. When we pumped the water to them a sailor was standing there and I asked him what they were doing with all the water and he said—I asked them if they were washing their clothes with it and he said no they were running their steam pump.

“Q. Was that all that was said? [33]

“A. He said they were running the pump at the times when the towboats were not in sight.

* * *

“Q. Could you tell from observing the ship whether or not the steam pump was running?

“A. Well, I know they told me they didn't run it only when we were out of sight.”

From the foregoing and the fact that, after the grounding inside the bar the crew of the “Stanford” mutinied and an exchange of crews with another vessel was effected, it is argued that she must have been leaking badly before being towed out.

The captain of the “Stanford” testifies:

“Q. It has also been testified here that the ‘Jane L. Stanford’ was consuming an extraordinary amount of water by reason of using her steam pumps, on account of leakage, is that a fact?

“A. The ‘Jane L. Stanford’s’ steam pump had never been used for over a year until we got over the bar and found the water in it and when we started in with it we couldn't get it to take water and when we got to Portland we found the steam pump had broken off just below the decks.

“Q. Did you pump at all while you were in the harbor and waiting to go out to sea?

“A. If we had pumped at all we might have pumped the day in coming down from loading, we sometimes hold a little water for the reason we are loaded but I am sure we didn't leak a

quarter of an inch from the time we were at anchor down the harbor until we went over the bar.

“Q. Do you remember receiving water from a tugboat twice while down in the harbor?”

“A. I remember receiving water, but whether it was once or twice or how many times I don't know. It was on account of having bad water down there and we had to drive the second anchor every other day and sometimes twice a day because it would get foul, if there is a heavy swell, and we would have to use more or less water and fuel and I think we got some fuel from them if I am not mistaken.”

I do not believe that the water secured from the tug was for the steam pump. I reach this conclusion, not only from the positive testimony of the captain of the “Stanford”—that [34] the water was used for handling the anchors—but from the fact that the steam pump was found broken when it was needed immediately after she crossed the bar. The only reasonable way to account for the breaking of the steam pump—even accepting the argument that the water furnished was for pumping—is that it was injured by the “Stanford's” striking on the bar and it is reasonable to conclude that the same violence that caused the breaking of the steam pump occasioned the other damage, including the straining of the seams and butts.

When the tug signaled the “Stanford” to let go the line after getting out over the bar, the “Stanford” did not at once cast off the line, the captain delaying to investigate how much water she was tak-

ing after striking. The report not being alarming, he cast off and, calling the tug alongside, told the tug's captain that he had struck. Shortly after this it was found that she was leaking badly.

The libel alleges:

“said master of respondent's said tug negligently and carelessly towed said barkentine to sea across said bar when the sea breakers on said bar were too heavy, and the depth of water on said bar too shallow to enable said barkentine to cross said bar in safety, and by reason thereof said barkentine struck on said bar and was badly damaged,”

and the answer admits:

“This respondent admits that there was a heavy swell and sea breaking on said bar, but alleges that such sea at the time of taking the vessel in tow and up to the time the vessel reached the bar was not extraordinarily heavy or unusual, and was, in fact, safe for the purpose of towing out any vessel and particularly the ‘Jane L. Stanford.’ * * * ”

There is evidence that there were three large rollers on the bar about the time the “Stanford” struck, her captain testifying:

“What was the condition of the bar, that is, the condition of the water, the sea on the bar at that time?”

“A. At which time, the time when we were going out? [35]

“Q. At the time you were going out?”

“A. Generally, the bar was lumpy, but just as

we struck there was three heavy rollers came in, three extra heavy swells came in.

“Q. Did they strike you?

“A. Well, we was right in them, had no chance to get out of them.

“Q. What was the wind?

“A. The wind was north, northwest, blowing a slight breeze. * * *

“Q. Then there were large heavy swells?

“A. Large heavy swells.

“Q. These large swells that came in just before you received this injury—you noticed how many big swells come in?

“A. Come in all the time.

“Q. These extraordinary large swells that you spoke of this morning—three extra heavy swells?

“A. That was when we started.

“Q. How long did you notice them before you struck if at all?

“A. We noticed them coming, them come probably every two, three or four minutes. * * *

“Q. Then—and so these three heavy swells you say were breaking three or four minutes before they struck you?

“A. Two or three minutes; I could not say exactly. * * *

“Q. The fact is that you did encounter three heavy swells right on the bar?

“A. Yes, very heavy swells. * * *

“Q. How many minutes did it take you, Captain, to pass through these three swells?

“A. I could not tell you; I didn't time it.

“Q. Well, about how many, five? A. No.

“Q. Two minutes?

“A. Took us probably two or three minutes. I couldn't say; I didn't take the time, but it was something like that.”

I am unable to find anything of such an extraordinary character in these waves as not to have been reasonably anticipated, [36] in view of the long preceding storm and the well-known fact that, in ocean swells, there is a degree of regularity in the recurrence of swells considerably larger than the majority at the time prevailing.

I find that the captain of the tug was in fault in undertaking the tow at a time when it was entirely too rough upon the bar for the depth of water.

It is not unlikely that the towing was undertaken too long a time prior to flood tide, or the “Stanford” may have gotten out of the channel, but, if so, these facts are not made clearly to appear. The latter could not be ascertained as she only struck and passed on. If she had remained where she struck, it could have been shown whether she was out of the channel or not. But, whether the striking was caused by the one reason or the other, the captain of the tug was negligent. Grays Harbor was the home port of the tug. It was the captain's duty to know the depth of water and the channel, and the effect thereon of the sea running at the time.

The Margaret, 94 U. S. 494;

Gilchrist Trans. Co. v. Great Lakes T. Co., 237

Fed. 432 at 434;

Cons. Coal Co. v. Knickerbocker Steam Towage Co., 200 Fed. 840;

The Merrell, 200 Fed. 826, 836;

The Ft. George, 183 Fed. 731;

The George Hughes, 183 Fed. 211;

Winslow v. Thompson, 134 Fed. 546;

The Inca, 130 Fed. 36;

38 Cyc. 571;

28 Amer. & Eng. Encyc. 266, 7.

Nothing is shown to have existed or transpired but what the captain of the tug was bound to have known and anticipated; nor did the "Stanford" do anything to impede or interfere in any way with [37] the safe performance of the towage service nor is anything of the kind even suggested.

Under such circumstances, the rule that damage to the tow does not, ordinarily, raise a presumption against the tug,

The J. P. Donaldson, 167 U. S. 599; 603;

The Burlington, 137 U. S. 391,

does not obtain and the burden shifts to the respondent to free itself from blame.

Gilchrist Trans. Co. v. Great Lakes Towing Co.,
237 Fed. 432, 434 (*Supra*);

Burr v. Knickerbocker Steam Towage Co., 132
Fed. 248;

Cons. Coal Co. v. Knickerbocker Steam Towage
Co., 200 Fed. 840 (*Supra*);

The Merrell, 200 Fed. 826;

Hind, Rolph & Co. v. Port of Portland (Decision by Judge Wolverton of Portland, not yet reported).

It has not sustained that burden.

I find the striking to have been caused by the fault of the tug captain, as stated. The extent of the injuries and resulting damage are not questioned.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Apr. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [38]

In the District Court of the United States, Western District of Washington, Southern Division.

IN ADMIRALTY—No. 858.

R. PETERSEN,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY,

Respondent.

Memorandum Decision on Amount of Damages.

Filed October 11, 1917.

McCUTCHEM, OLNEY & WILLARD, IRA A.

CAMPBELL, C. H. HANFORD, for Libelant.

MORGAN A. BREWER, for Respondent.

CUSHMAN, District Judge.

The pains with which this matter has been presented has saved the Court a great deal of labor.

Item. Disallowed. Allowed.

P. L. Cherry, disallowed upon concession of counsel for Libelant \$11.15

James Keating, boat service at Astoria, allowed \$6.00

| Item. | Disallowed. | Allowed. |
|---|-------------|----------|
| A. N. Nelson, night watchman, allowed..... | | 18.50 |
| Ross, Higgins & Co., meat bill, disallowed upon concession of counsel..... | 9.15 | |
| Captain Peterson, personal expenses, allowed.... | | 50.00 |
| Brown & McCabe, use of engine, allowed..... | | 25.00 |
| Anderson & Crowe, use of caulking tools, allowed..... | | 12.50 |
| | ----- | ----- |
| Amount allowed claims forwarded..... | | \$112.00 |
| [39] | | |
| Amount of allowed claims forwarded..... | | \$112.00 |
| Anderson and Nelson, work putting on deck-load..... | | 4.00 |
| John Grant, commissions for procuring sailors | | 250.00 |
| It is customary and necessary for ships in port to pay a commission to men who make a business of securing crews. | | |
| Brown & McCabe, moving ship and other work..... | | 54.17 |
| Brown & McCabe, amount of claim, \$1936.35, stevedoring and coal, allowed except as to \$88, which it | | |

| Item. | Disallowed. | Allowed. |
|---|-------------|----------|
| is conceded by counsel should be disallowed..... | 88.00 | 1848.35 |
| Port of Portland, storage and water.. | | 235.36 |
| C. F. Beebe & Co., disallowed upon concession of counsel..... | .25 | |
| Port of Portland..... | | 692.70 |
| Port of Portland, moving the ship, disallowed upon concession of counsel..... | 20.00 | |
| Albert Crowe, survey and superintendence..... | | 90.00 |
| Custom House fee..... | | 2.50 |
| James Keating, boat service at Astoria..... | | 9.00 |
| Vulcan Iron Works, materials and repairs..... | | 60.40 |
| Geo. A. Nelson, brokerage..... | | 15.00 |
| Telephone..... | | 1.40 |
| Repairing lantern, disallowed upon concession of counsel..... | .50 | |
| Telegram..... | | 3.87 |
| Astoria Iron Works, repairing pump | | 7.75 |
| Notary fee for marine protest..... | | 5.00 |
| Hageman & Foard Co., ship chandlers, disallowed upon concession of counsel..... | 255.50 | |
| C. F. Beebe & Co., chart, disallowed upon concession of counsel..... | .25 | |
| J. A. Stephens, watchman..... | | 15.00 |
| Pay-roll of caulkers and mechanics. | | 453.00 |

| Item. | Disallowed. | Allowed. |
|---|-------------|------------|
| John Redding, returning tools to Portland..... | | 3.00 |
| | | <hr/> |
| Amount of allowed claims for- warded..... | | \$3,862.50 |
| [40] | | |
| Amount of allowed claims for- warded..... | | \$3,862.50 |
| Ch. Johns, clearing wharf..... | | 30.80 |
| Oregon Drydock Co., materials & re- pairs, \$1161.85, allowed save as to \$87.50, which is disallowed on concession of counsel..... | 87.50 | 1074.35 |
| Telegram, disallowed upon concession of counsel..... | | .53 |
| A. Ekstrom and P. S. King..... | | 18.60 |
| W. A. Pratt..... | | 42.50 |
| Earle E. Drum, disallowed..... | 222.69 | |
| <p style="margin-left: 40px;">If this item had been paid, the fact of payment being an act against interest, would afford some evidence of the value, but I find no evidence regarding its value.</p> | | |
| Messenger..... | | 1.10 |
| Ross, Higgins & Co., meat bill, dis- allowed upon concession of coun- sel..... | 6.60 | |
| Van Schuyver, whiskey, disallowed upon concession of counsel..... | 3.70 | |

| Item. | Disallowed. | Allowed. |
|--|-------------|----------|
| Allen & Lewis, provisions, disallowed upon concession of counsel | 151.54 | |
| J. A. Stephens, repairs | | 28.95 |
| John Grant, allotments of wages of new crew, disallowed | 174.05 | |

This item of allotment of wages, or advances, made on the wages of the new crew, to John Grant, the agent who secured the crew, cannot be considered as a damage incurred because of the injury to the vessel.

The true damage accruing on account of the new crew would be the amount paid them on account of their services during the delay of the vessel in port during the making of repairs, damages on account of which have been claimed and are later allowed herein.

| | |
|---------------------------------|-----------|
| Amount allowed claims forwarded | \$5058.80 |
| [41] | |

| | |
|--|-----------|
| Amount of allowed claims forwarded | \$5058.80 |
| American Marine Paint Co., copper paint. | |

There is nothing to show that the paint charged for replaced any paint. During the time the

| Item. | Disallowed. | Allowed. |
|---|-------------|-----------|
| vessel had been out of the dry-dock, the old paint may have been entirely worn off. This item for copper paint is disallowed. | \$160.00 | |
| Smith, meat bill, disallowed upon concession of counsel. | | 50.28 |
| John Redding, bringing sail, disallowed upon concession of counsel. | | 3.50 |
| C. Karlson, 29 meals, disallowed upon concession of counsel. | | 7.25 |
| J. Swanson, 2d mate, wages, disallowed upon concession of counsel. | | 20.00 |
| Boston Packing Co., provisions, disallowed upon concessions of counsel. | | 15.63 |
| Telegrams. | | 7.50 |
| Living expenses of master and crew during time of ship's detention. . . | | 212.65 |
| Wages for time of detention. | | 627.83 |
| Expenses of general average adjustment: | | |
| Printing report. \$30.80 | | |
| Committee fee. . 30.00 | | |
| Adjuster's fee. . 100.00—\$160.80, | | |
| | ————— | |
| allowed. | | 160.80 |
| | ————— | ————— |
| Total amount of allowed claims. . | | \$6067.58 |

In damage to person or property, where there is no repair, the damage is truly unliquidated, at least

until the judicial determination of its amount, and another rule may obtain. But, in the foregoing items of damage allowed—being for money expended in restoring the ship and for expenses attendant upon the injury and delay, all of which have been paid—interest upon such expenditures for at least a reasonable length of time appears the better rule. [42]

The allowance of interest is, of course, in the court's discretion; but, as one is ordinarily entitled to interest upon expenditures on account of another, in the absence, as in the present case, of any extraordinary reason constituting a countervailing equity of some sort, such as have been made grounds in certain cases of the denial of interest, it should be allowed.

The *Jeanie*, 236 Fed. 463 at 473; (same case below), 225 Fed. 178;

The *Bulgaria*, 74 Fed. 898; Affirmed 83 Fed. 312;

The *Oregon*, 89 Fed. 520;

The *Illinois*, 84 Fed. 697;

The *Sitka*, 156 Fed. 427, Affirmed 159 Fed. 1023;

The *J. G. Gilchrist*, 173 Fed. 666; Affirmed 183 Fed. 105;

The *Eagle Point*, 136 Fed. 1010.

While this latter case was reversed upon another point, it was, impliedly, affirmed as to the point in question (142 Fed. 453).

In the present case substantially seven years have elapsed since the injury and commencement of suit. It is true that, in one of the reported cases of damage from collision, interest was allowed where there was

a delay of twelve years in bringing the cause to trial (The Celestial Empire, 11 Fed. 761), yet, in the absence of any explanation for the long delay, a certain amount of laches will be attributed to libelant. I consider that, while libelant is entitled to interest, yet it would be inequitable to allow such interest beyond the period of five years and, for that time, it is allowed at six per cent upon the total of the foregoing amounts (\$6,067.58), amounting to \$1,820.27.

[43]

Demurrage will be allowed for the value of the use of the vessel during the delay occasioned by repairs, 52 days at \$17.31 per day or \$900.12. Loss on account of broken lumber, \$153.77 and loss on account of the freight \$76.28 will be allowed, but no interest will be allowed on the last mentioned items.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 11, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [44]

*United States District Court, Western District of
Washington, Southern Division.*

No. 858.

R. PETERSEN,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

Decree.

This cause having been commenced by Robert Petersen, master of the barkentine "Jane L. Stanford," in behalf of the owners of said vessel and her cargo; and having proceeded to a final hearing, and the Court, after due consideration of the pleadings, proofs and arguments, having rendered and filed its decision in writing, and being now sufficiently advised in the premises, it is hereby:

ORDERED, ADJUDGED AND DECREED by the Court that, Robert Petersen, the libelant herein, do have and recover of and from the Grays Harbor Tug Boat Company, a corporation, for the use and benefit of the owners of said vessel and cargo, as damages for the injury alleged in the libel, including interest on the amount of the cash outlay caused by said injury, the sum of Nine Thousand and Eighteen Dollars (\$9018.00), and interest thereon at the rate of six per cent per annum from this date until paid; and costs and disbursements taxed and allowed in the further sum of One Hundred and Fifty-one Dollars and Seventy cents (\$151.70), and that execution issue therefor.

This decree granted and signed in open court this 19th [45] day of October, 1917.

EDWARD E. CUSHMAN,
Judge.

Exception asked by respondent and claimant and allowed.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington. Oct. 19, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [46]

In the United States District Court for the Western District of Washington, Southern Division.

No. 858.

R. PETERSEN,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

**Stipulation Re Testimony to be Included in Apostles
on Appeal.**

It is hereby stipulated and agreed by and between the libelant by his proctor, C. H. Hanford, and the respondent by its proctors, Morgan & Brewer, that the subjoined abstract contains all of the testimony introduced in said cause, heard and considered by the trial court, and material upon appeal to the Circuit Court of Appeals.

And it is stipulated that the said abstract may stand as and for a complete record of the testimony upon appeal.

The respondent, Grays Harbor Tug Boat Co., not admitting its liability for the payment of damages, stipulates that it makes no point as to the correctness of any of the several items of expense allowed,

except as to the item of Fifty (\$50.00) Dollars expense money paid to Captain R. Peterson; and the item of \$250.00 commission paid to John Grant; the item of \$160.80 allowed as expense of a general average; and the item of interest for the period of five years allowed by the Court.

C. H. HANFORD,

Proctor for the Libelant.

MORGAN and BREWER,

Proctors for the Respondent. [47]

*In the United States District Court for the Western
District of Washington, Southern Division.*

IN ADMIRALTY—No. 858.

R. PETERSEN,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a
Corporation,

Respondent.

Testimony.

Abstract of Testimony, Witnesses for Libelant.

The following testimony on behalf of the parties hereto was received, heard and considered by the Court.

Deposition of R. Peterson, in His Own Behalf.

Master of barkentine, "Jane L. Stanford." Master of the "Jane L. Stanford" about a year and a half. Sailing in and out of Grays Harbor for about six years. Last out of Grays Harbor October 25th, 1910. (Page 2.)

Towed down from wharf to anchorage on the 5th of October. Had no contract for towage. We telephoned to them (Company) when we wanted to go outside. (Page 3.)

I telephoned to their office; they told me they would try to have a tugboat there for me. Net tonnage of the "Jane L. Stanford," 861 tons. Her draft 19 feet 10 inches forward and 20 feet 2 inches aft. (Page 4.)

We remained at anchorage close to twenty days. The cause of delay was simply on account of the tugboat captain didn't think it was fit weather to go out. [48]

Q. Well, you were waiting for suitable conditions on the bar were you not?

A. Waiting for the tugboat captain to heave up and take his tow-line; that is exactly what we were waiting for. * * * Well, when we towed down; after we go down inside to anchorage we have absolutely no say at what time we want to go out over the bar. When the tugboat comes down he tells us when to get ready, tells us when to heave up our anchor and that is all the control we have of when we are going out. (Page 5.) I was towed out on the 25th of October by tugboat "Cudahy." (Page 5.) Cap-

(Deposition of R. Peterson.)

tain Olseon was the captain. I spoke to him in the morning when he went down to the bar and came back to our vessel. He told me it did not look very favorable. At one o'clock he went down to watch the bar again. Captain Johnson and Captain Erickson of the other two steamers were starting to tow the other two vessels out, and he hollered out to us to take his hawser and heave up. We started to tow down at 2:30; we was abreast of the outer red channel *buoy* No. 2 at 3:45. (Page 6.)

We went out the south channel. The south channel had been in use after I arrived in port and that was probably in use four or five weeks before I started out. Had never been through that channel before. In towing out we followed the tug. I have known Captain Olson quite a few years. He has been employed by the Grays Harbor Tug Boat Co. off and on for the last few years. (Page 7.)

He was employed on the dredger working in the harbor while I was loading. Captain Olson told me not to set any square sail until we got out clear of the head winds. I had no understanding with him as to the channel to be followed out. Two other vessels towed out ahead of us. They drew less water by a couple of [49] feet. I should judge one of these vessels was five or six miles ahead of us, and the other was about a couple of miles ahead of me when this accident happened.

After rounding the red channel buoy No. 2 I should judge we took a course, south half west, magnetic. (Page 8.) The tugboat zigzagged a lit-

(Deposition of R. Peterson.)

tle. Tugboats always do a little. Impossible to keep a straight course going out to sea. As far as appearance went the vessels ahead of me got across the bar safely. Fifteen minutes after we rounded the red channel buoy we struck bottom heavy, very heavy, aft and forward. No, a vessel don't stop. I didn't stop. No, a vessel don't stop. You see a heavy sea comes down and she never stops, she continues going; she struck down. She struck first aft and then forward; it was about two hours before high water, flood tide. I sounded going out. I had a man sounding. (Page 9.)

Q. What did the readings show at the time you struck?

A. The report he gave me a few seconds before she struck was four fathoms and a half, but of course we always allow a few feet, you know, for sea.

* * *

Q. When did you take the reading on a rising sea or otherwise?

A. We always allow from two to four feet of water; always count on that, because if standing sounding we always leave a slack line in a heavy sea and we never count on that coming within two to four or five feet of water, on our line. (Page 10.)

The report he gave me before she struck was four fathoms and a half. If we had four and a half fathoms at that time we should have six feet ten inches clear. The bar generally was rough but just as we struck there was three heavy rollers came in, three extra heavy swells came in. We was right in

(Deposition of R. Peterson.)

them; had no chance to get out of them. The wind was north, northwest. Immediately prior [50] to the striking the sounding was the least water he reported. We had seven, but inside we have more water. She shoaled water he reported to me going out. The tug let go fifteen minutes after striking; that is, he whistled to let go fifteen minutes after but I refused to let go his line. (Page 10.) Yes, the first officer sounded. He reported the same usual eight inches in it. That is what we have in the vessel nearly all the time. I let go then. I told the mate to let go and sung out to the captain to come alongside. I told him to report to the company that we had struck very heavy going out; that so far we was not making any water. I sounded twenty minutes after. We found twenty inches of water. Yes, after we started to go down we set the mizzen and mainsail, inner jib and foretop stay-sail. That was the only sails set until we had passed that red channel buoy and then we went south. When we set the lower topsail, and when we were beginning to loosen the upper topsail the vessel struck. (Page 11.)

Q. After sounding the second time, Captain, with a report of twenty inches of water, what did you do?

A. Well, at that time we had set all the sails; that is a majority of the sails; we had all our sails set outside of the skysail; I ordered all the small sails clued up and made fast.

After they were fast I sent all hands to the pumps, everybody, mate and all hands outside of the man on the lookout. We worked two pumps. I could just

(Deposition of R. Peterson.)

hold her by working both pumps; we had then 42 inches in her. * * * That same evening, at 11 P. M., I set the ship's course for the Columbia River Light Ship. At 11 o'clock the next morning the tug "Oneonda" picked us up and towed the ship to Astoria; she was anchored there a day and a half and then towed to St. Johns and anchored; the next day she was put into the wharf of the port of Portland drydock and began to discharge lumber. * * * (P. 11-12.) [51]

The ship went on the Oregon drydock. I examined her on the drydock. Part of the shoe aft and forward was gone; part of the keel injured by striking on the rocky bottom; all the butts and all seams aft from keel to coverboard were started, and quite a number of seams fore and aft on the whole length of the vessel had started. The rudder gudgeons were slightly twisted. We found the steam pipe from the pump had broken off just below the deck. Some of the planks forward were cut like a sharp ax had come down on them; we had to put pieces in quite a few of them. The butts were started; what we mean by starting is where two planks are joined, or two planks meet and are cemented part of the cement had fallen out and the oakum worked out. The injury to the keel was all along in different places about two feet some places, a foot in some places or eight inches; we had to put pieces in.

Captain Albert Crowe examined the vessel on the drydock. He was there in the interest of the underwriters. (Pages 13-14.)

(Deposition of R. Peterson.)

Referring to conditions on the bar: Well, I never towed out with as rough a bar with a sailing vessel; I have gone out with a steamer when it was as rough; but never with a tugboat when it was so rough. Never sailed out when it was as rough as it was, with a sailing vessel. (Page 15.)

On cross-examination he said:

I have been sailing out of Grays Harbor six years or a little over. I took out the barkentine, "News-boy" and "Fair Oaks," and the vessel I have got now, the "Jane L. Stanford." (Page 19.)

On pages 18 and 19 of the set of depositions taken by H. G. Marsh, United States Commissioner at Portland, Captain R. Peterson, a witness in his own behalf, testified as to the items of expense for repairing the "Jane L. Stanford" as follows: [52]

| | |
|---|----------|
| Paid to Brown & McCabe brokerage fees | |
| for entering and looking after the | |
| vessel | \$ 15.00 |
| For pilot's launch hire at Astoria | 9.00 |
| For watchman at St. Johns, looking after | |
| the lumber cargo while the vessel was | |
| in drydock | 15.00 |
| For labor at St. Johns moving pipe and | |
| laying cargo down | 30.80 |
| Paid Joseph Redding for launch hire | 3.00 |
| Paid calkers and helpers | 453.00 |
| Paid Oregon Drydock Company for labor | |
| and dockage | 1,161.85 |
| Paid the Vulcan Iron Works | 60.40 |
| Paid Hagerman & Ford Company | 255.50 |

(Deposition of R. Peterson.)

| | |
|---|----------|
| One chart of Grays Harbor | .25 |
| Special messenger to St. Johns | 1.10 |
| Towage in and out from Astoria to Port- land | 697.20 |
| Storage for lumber | 225.00 |
| Stevedoring, approximately | 1,800.00 |
| Coal, fuel discharging cargo | 58.50 |
| Stevedores for hauling ship and help, etc..... | 44.12 |
| Exchange on draft sent to Brown & McCabe | 8.50 |
| Telegrams to San Francisco Under- writers | 5.70 |

That is all the bills at the present time but that is now all the bills completed. I will have to pay bills for getting my sailors and I will have to pay wages and bills for our stores and everything else.

I was anchored in the lower harbor about twenty days. (Page 20.) Probably seven miles from the bar. During the time I lay there I went aground once. I guess it was about ten days before [53] we went out. I went aground on the north spit, on the north side of the channel. I think I stayed aground about five hours. I certainly knew when we went aground. I certainly was awake; whenever anything like that happens I was up. She went aground on the north side of the channel. She just went aground down on the Sand Island near there. No, she went to the southern of Sand Island. Certainly, yes, sir; I was awake when she went aground. (Page 21.) She did not bump. It was blowing

(Deposition of R. Peterson.)

when she went aground. Wind was south, southwest. It was what we call a blow. Went aground in the night between twelve and one o'clock somewhere as near as I can say. She never bumped. Nobody knowed she was aground outside of sounding with *with* the lead and line. I got off in the morning when the tug came down. The tugboat put a line to us and pulled us off. Captain Johnson was pulling first and then I requested him to let go that I could get away and then Captain Sanborn finished the job. Captain Johnson had the "Daring." The "Daring" was a powerful tug. He pulled well, I should judge between five and ten minutes, altogether. (Page 22.) I wish he hadn't pulled at all. I was only sorry that I got him to pull. Because when Sanborn came along he could do the pulling. I only wanted to hold on until I got my anchors clear and she would have floated out as soon as high water came. Sanborn pulled me off. I could have floated out at high water but not at low water. I laid there something like ten days after that. On the day on which we actually went over the bar Captain Olsen came along. No, he didn't say it was too rough; the first thing, he went down to the bar and then he came back and said it didn't look very promising, or very good, but it might smoothen when the flood sets in; that was the words he used. That was in the morning. He tied up a line there until about one o'clock. Then he went down to watch the bar again and then came back. He was down about to the inner black buoy when

(Deposition of R. Peterson.)

Johnson came down towing the ("F. J. Wood") and the "Printer" started towing the barkentine "Americana." (Page 23.) One anchored I [54] should judge half a mile and the other three or four miles from me. They all started; no he didn't start out with me. He, Olson, did not start out with me; he was away down and then came back. He came back; he says—I says, "You are not going to take me out to sea; you are going to take one of the small ones, the 'Fred J. Woods' or the 'Americana.'" He says, "No, you heave up and grab my hawser." No, I didn't want him to take me because he was too small for that tow. He had the "Cudahy." Of course he took me. As you go down the bay you are not able to see the bar. Unable to see at all until you get down to the outer red channel buoy No. 2. I can see its condition if I climb up the rigging, but I can't do it standing looking off toward the bar. I certainly did watch the bar. I had my glasses out as soon as I was able to see it. Yes, when I got so I could see the bar it was very lumpy. (Page 24.) I mean when a very big swell comes in, when it breaks off the bar, when it breaks then I call it very rough; I could not say this bar was breaking, but it was very lumpy; large, heavy swells. Big swells come in all the time. These three extraordinary heavy swells, that was when we struck. I notices them coming. They come probably every two, three or four minutes. I would not say the distance, but it was a few minutes before. You bet they were breaking. These three heavy swells were breaking

(Deposition of R. Peterson.)

two or three minutes before they struck us; I could not say exactly. When we got over the bar there was swells as there generally is in the winter-time; was not choppy; was not breaking outside. (Page 25.) It is never breaking out in deep water; if it is there is something doing. No, the swells outside were not especially heavy, there was swells that we generally have in the winter time from the southwest; the wind was north northwest. It was what I call a full sail breeze. I did not suffer any from encountering any heavy gales. I suffered from want of sleep. The vessel bumped pretty hard. The hardest I ever bumped. I say she bumped heavy fore and aft once. (Page 26.)

I told them not to let go the tow-line until we found out if we [55] were leaking water. He, the mate, came back and reported eight inches of water. I thought at that time the vessel was safe enough to proceed with. Johnson went out the same way I did. Yes, sir; he had no trouble that I know of. Erickson went out with his tow just ahead. He was a couple of miles ahead of me. So far as I know he had no trouble. If I had been on the bar five or ten or fifteen minutes earlier it is hard for me to tell whether I would have had any trouble. I could not say anything about it. Q. "Would you have had any trouble if you had not encountered those three rollers that you spoke of?" A. "I can't tell; it is impossible for me to tell what would have happened." (Page 27.) You know "if" is a hard thing to say. The fact is we did encounter three

(Deposition of R. Peterson.)

heavy swells right on the bar. I could not say how long it took to cross over this bar. I have never been over the bar the way we went before. The other way we used to go out that is at least twice as long a distance, we were towed out over shoal water. This time we didn't have shoal water only two minutes after he had bumped us; we had deep water again and I could not say any actual time; I could not say anything about the bar because there is absolutely no buoys or anything I could tell the bar by. Had soundings of considerable depth of water just a minute or two before we started over the bar. A couple of minutes after we had considerable deep water. Any seafaring person always notices that three swells come along together, close together, following each other. Yes, three big rollers came in one after another. I don't think a vessel could be long enough to ride all of them at one time. (Page 28.) My vessel only rode one at a time. We caught the swells almost a beam. Swells usually come from the northwest. We were in three of them before we finished; three of them had to pass us. We were in the trough of each one of them. It would be possible for a tugboat to turn around when on the outer edge of the red channel buoy. Could not turn around outside on leaving the red channel buoy, the outer red channel buoy. After you pass the red [56] channel buoy you might say you start in on the bar; that is a new channel according to the way we was towed. From the time we was at the red channel buoy and turned around

(Deposition of R. Peterson.)

until the time he let go it took us about half an hour. (Page 29.) It took us probably two or three minutes to pass through these three swells. I could not say. I didn't take the time. I had a man named Steel heaving lead. I was on top of the deck load all of the time. Sometimes amidship, sometimes forepart, always where I could talk to the men at the wheel and hear what they said when they was heaving lead. Before we struck we got four and one-half fathoms. (Page 30.) I am not positive what we got the next time. The tug took us over the bar. I should judge about fifteen minutes after we struck he blew his whistle to let go. No, I didn't have much sail set. "I had the mainsail, mizzen, inner job, foretop staysail and forelower topsail; that is the sail we had on." That would not be half the canvas, I don't think. (Page 31.)

The "Jane L. Stanford" was built in Eureka, California, in 1891 or 1892. She was on the drydock at San Francisco, a year ago last June. (Page 36.)

I was not her master then. I don't know anything about when that channel formed excepting what somebody told me. I have it from very good authority, the tugboat captains; they know more about that than anybody else. They come in and out every day. They are supposed to know all there is to know about it. (Page 37.)

On redirect examination he said:

Yes, I say I went aground ten days before crossing the [57] bar and while at anchor. (Page 40.)

(Deposition of R. Peterson.)

Oh, I guess it was kind of sandy bottom as far as I know; it is all sandy, whatever comes out of the water shows nothing but a soft muddy sand. Nobody knowed that she was aground. You can't call it perfectly smooth with quite a breeze, but you can't get any sea in there; a little choppy that is all. She dragged aground with both anchors down. (Page 41.)

"Now, Captain, you say that the keel in many places was dented in?" Yes, pieces taken out. To the best of my knowledge she was last in drydock a year ago last June. She was in first-class condition. I have never been in my life on a vessel that was more seaworthy or stauncher vessel than the "Jane L. Stanford." She is noted for that on the coast. She was due for the drydock for cleaning and painting; no repairs whatsoever. (Page 42.)

On recross-examination he said:

When I first towed down they anchored me first at the black tank. No, sir; I didn't object to being anchored at the black tank. No, sir; I requested them to put me down closer to the bar where I would be safe and where I would be handy for them to take me *me* out; that is just as much to oblige them as me because they like it that way; the tugboat captains like that. The black tank is about one-half way further up. Not any safer than the others. They anchor just as many down there as they do up there; in fact we all anchor down there. I could not tell you where the "Jane L. Stanford" has been; I have been in these ports—Sydney, Newcastle and Adelaide.

(Deposition of R. Peterson.)

Do not know whether she has ever been on the rocks there. (Page 43.)

I examined her bottom on the drydock at Portland. Never [58] saw her keel before that time. Never saw condition of her shoes before that time. Only the report the captain gave me when I took charge of the vessel. Did not see condition of her rudder or gudgeons. Do not have to see them. Don't have to see that.

Q. You never examined her seams below the water-line until she was on the drydock at Portland?

A. Well, I have laid with that vessel five months and the vessel has never taken in a half inch of water.

**Deposition of Captain R. Peterson—November 9,
1914.**

Direct Examination.

If she pounded (when she was on the sandspit) then I don't know it because we absolutely didn't know we were aground; I didn't know it before two hours after she was aground on the spit and the mate came down and he told me and I said, "Why didn't you call me when she got aground?" and, he said "We couldn't do anything." I was on deck at the time the tug towed us off. No, there wasn't any pounding whatsoever, she jared a little bit when he was swinging her off; not sufficient to do any damage. (Page 126.)

No, no heavy swell that I noticed. The "Jane L. Stanford's" steam pump had never been used for over a year, until we got over the bar and found the

(Deposition of R. Peterson.)

water in it and when we started in with it we couldn't get it to take water and when we got to Portland we found the steam pump had broken off just below the decks. If we had pumped at all we might have pumped the day in coming down from loading, we sometimes hold a little water for the reason we are loaded but I am sure we didn't leak a quarter of an inch from the time we were at anchor down the harbor until we went over [59] the bar. I remember receiving water but whether it was once or twice or how many times I don't know. It was on account of having bad water down there and we had to drive the second anchor every other day and sometimes twice a day because it would get foul, if there is a heavy swell, and we would have to use more or less water and fuel and I think we got some fuel from them if I am not mistaken. (Page 127.) No, sir; the vessel did not at any time while we were on the spit lay on her anchors. We could not drift on to them. As near as I can recollect after the "Daring" left the tugboat (after pulling off the sandspit) hung on to us for an hour or so, I can't say, it might have been two hours but I couldn't say, it is so long ago I can't remember but I am positive it was not near twelve hours, I am positive it was nearer six than twelve hours. That was not pulling us off the bar. No, sir; he held on to us, when we were laying aground, one chain was leading right out and the other was leading ahead and we tried to heave one in and it tore the bow-string, the lower bow-string and we had some little trouble with the anchors. (Page

(Deposition of R. Peterson.)

128.) The tug had to hold on to us until we got our anchor in. No, sir, the anchors were not at any time under the vessel; the anchors could not very well float up underneath the vessel and then on the sandbank.

Q. "There has been some testimony here in regard to trouble with your crew, a mutiny in fact, did any trouble with your crew relate to the fact that you had gone aground on the bar?"

A. "Well, perhaps it has; it was after we had been aground; I don't remember when it was whether it was the same day or the next morning; I wouldn't say; it might have [60] been in the evening. The cook gave them a meal and they all refused to eat it; they all said it wasn't fit to eat and they wouldn't do any more work aboard the vessel and this thing happened after we were off; they didn't refuse when we were on the spit; they didn't refuse to work while we were on the spit or before we got on; this was all after." I locked them up and I sent for the United States Shipping Commissioner, which I have got to do, and we arranged that they were to take our men to another vessel and we were to work the crew from the other vessel. There were two men on our vessel that remained aboard. (Page 129.)

There was no fright or excitement on the part of the crew. Nothing to frighten them. We had no damage at the spit, if we had had any damage I wouldn't have gone to sea that way, I wouldn't have taken my family and the crew out and risk getting drowned if there was any danger. Yes, I would know if she had leaked in the harbor before we got

(Deposition of R. Peterson.)

out and if she had taken a quarter of an inch of water. (Page 130.) It was a week at least after she grounded before we went to sea. That was the first time the steam pump had been tried for over a year. I have heard the testimony of the witnesses to the effect that the bar was smooth. I don't think it was smooth. I don't think anybody else thought it was smooth. (Page 131.)

On cross-examination he said:

She went aground but she didn't thump on the sandspit on Sand Island. The second mate kept watch, the mate and second mate, and they came down and reported to me, after about two hours he came and told me. He said she had been aground for an hour and a half, and I said, "Why didn't you call me right off?" [61] and I said "You have orders to call me as soon as she started dragging." Yes, sir; I was asleep when he came and reported to me.

Q. "Why did you testify at Portland under oath before the Commissioner there that when you went aground you were wide awake, why did you say that, that you were awake?" I certainly was awake when anything like that happens. As far as I remember now I was asleep, as far as I can remember, this is a long time ago you must remember. (Page 132.) If I say it there, that was at the time it happened and I must have been awake. I was awake when she went aground. Certainly, yes, sir. Yes, sir, I mean then that I was awake.

(Deposition of R. Peterson.)

Redirect Examination.

If she thumped I would know it at once. I don't just remember what time it was. After that I was up all the time while she was aground. (Page 133.) Well will say I was on deck all the time as far as I can remember but I thought I was below at the time asleep but if I gave that testimony at that time I certainly was there.

Recross-examination.

It was not calm by a long ways. I would consider it was blowing. There may have been a swell but there is never any sea. [62]

Deposition of O. F. Thomsen, on Behalf of Libelant.

Second mate of the "Jane L. Stanford" during the month of October, 1910. Been at sea twenty-two years. Been with "Jane L. Stanford" since October 5, 1910. Was second mate on the "Stanford" at the time she crossed the bar. The "John Cudahy" was towing. The only thing occurred, of course, was the time we struck. We struck, yes, about ten minutes or so before the tug would let us go.

Q. "What caused you to strike?"

A. "The only thing I can say was the heavy swells rolling in over the bar at the time."

Well, they were not what you could call heavy seas but heavy swells; just the time it struck I could not exactly swear to it. (Page 45.)

We struck with force; just stopped right dead, stopped just as if had come up against a stone wall; she stuck pretty hard; I was standing on the deck

(Deposition of O. F. Thomsen.)

load just abaft of the forward house. I had my feet on the lashings and the lashings just collapsed and came up again just like fiddle-strings. No, sir; I could not say what the soundings showed; there was a man in the chain heaving lead, but I didn't take any notice of how much water he was getting. Yes, I made soundings; it was twenty minutes after we let the hawser go. Got twenty inches of water. We lay at anchorage twenty-three days before towing out across the bar.

Q. "Do you know what caused your delay at anchorage?"

A. "Well, they claimed it was too rough for us to cross; that is the only reason I know. There was some ships went out the time we laid there but all drew less water than we did. The Tugboat people claimed it was too rough to go out; they were supposed to take us out; they come up every day and [63] looked at the bar and they thought in their estimation it was too rough to take us out, and left us there."

On cross-examination he said:

I never was out of Grays Harbor before. I signed on the October 5th, at Tacoma. (Page 46.) We laid down inside of the bar for 23 days. During that time the tugboat people told us it was too rough to go out; Yes, that is the reason we were delayed. No, I didn't hear all of the conversation. I heard several times the captain asked, I don't know the man's name on the "Daring," asked about going out; well, I could not say exactly how many times I heard it,

(Deposition of O. F. Thomsen.)

but generally when those boats go by the captain generally hollered to them, to the captain of the tug-boats, and they say, "nothing doing" say it was too rough. He, the captain only asked if there was any chance for us to go out. I heard them talking it over once the day they took the —— and "Americana," I think; they always seemed to think it was better to wait and go out safe than to take any chances. Went out October 28th, and while crossing the bar, we struck. (Page 47.) There was no heavy sea at that time, just swells, heavy swells; that is my opinion. It is very hard for us to tell it from inside; it always looks like swelling bar out there; when we crossed there was heavy swells rolling there all the time. I could not tell but heavy swells come at the time we struck. I was standing at the deck load at the time we struck; just *doing* down to turn the steam off the winch. I know that just at that time several heavy swells came in. Yes, came in, and that we struck. I'll tell you exactly how it felt; just felt that you would take the ship and drop her up against something hard and felt to me she just stopped there, just [64] stopped short. (Page 48.) Yes, it bumped on the bottom. Yes, sir; she came right up again on this swell. She only hit once. She bumped full length; she struck forward, that is the way it felt to me, but the other people there said she struck aft; so she must have struck pretty hard right along. No, sir; I can't say I observed any swells before that reached the ship. I did not observe any. None of the lashings parted that I spoke of. Simply gave

(Deposition of O. F. Thomsen.)

and then tightened up again. At times she pitched before these swells came in she pitched more. (Page 49.) I never towed out over this harbor before. The first officer's name was McDonald. I think he is in Aberdeen. I think he left the ship on November first.

Redirect Examination.

We went behind the tugboat all the time; that is in her wake.

Deposition of Fred Johnson, for Libelant.

I signed on the "Jane L. Stanford" on October 5th. I was twenty-one days on board until the day we pulled out from Grays Harbor. We passed out from Grays Harbor under tow. We had five sails set. I could not tell the name of the tug there; I had never been in Grays Harbor before in my life. The condition of the sea on the bar at the time we crossed was quite rough, choppy like, breakers. (Page 51.) I was up on the fore topsail yard. Well, I know what happened, I went first down the yard when she struck and I caught hold of one of the butt-lines. The vessel struck on the sea. Yes, sir; well, so hard as anything could; same [65] as if you jumped from that window hard on the street on the sidewalk. The vessel stopped. Well, I could not tell you exactly how long she stopped; she just stopped dead when she struck. The next wave came and lifted her out and we went on then. I do not know what made her strike. The tug let go the line just when she struck; the captain was standing out and sang out,

(Deposition of Fred Johnson.)

“Don’t let go.” “Don’t let go.” Me and another fellow was up loft loosening the sails when she struck. Pretty good wind blowing; pretty stiff breeze. We started; Mr. McDonald went down to sound it and in fifteen minutes Mr. Thompson went down to sound again. I don’t know what was in there. (Page 52.) How much water was in there; sounded the pumps. I never crossed that bar before. I do not know why we waited twenty-one days before we went out. (Page 53.)

On cross-examination he said:

Been going sea, deep water, for eleven years. First trip out of Grays Harbor. I am an able-bodied seaman. I was up loft. I looked out over the bar as we went out. The sea was choppy, breaking like on the bar. Quite a heavy sea all around. When we got out over the bar the sea was not choppy; heavy rolling sea; heavy swells; good stiff breeze. (Page 54.) I could not tell the direction of the wind. I never noticed three unusual swells just about the time we struck. Loosening up the upper topsail. Bumped once, that is all I noticed. I was not looking down to see whether any unusual swells were coming in. No, sir, I could not say I saw unusual swells. Struck aft. She was pitching before she struck. We were lying down inside the bar twenty-one days. (Page 55.) We went aground once. It was on a Sunday night; [66] we had two anchors down when she dragged. Dragged up on the Beach; low tide. Well, on Monday morning in about two hours the tide came up again. Tow boats got us off. It was all of a week

(Deposition of Fred Johnson.)

before we went out. Tugboat pulled us off Monday morning. (Page 56.) There was a storm that Sunday night; blowing pretty good from the southwest, I believe. We went aground on the side of the channel opposite Westport, on the north side. She was laying over that morning when we turned out.

Redirect Examination.

I discovered we were aground in the morning when we turned out. (Page 57.)

The tug had no trouble pulling us off. She swung around once and then it got her off. It took about a couple of hours.

Recross-examination.

We had two anchors out; two bow anchors; she went sidewise.

Deposition of Albert H. Crowe, for Libelant.

Captain ALBERT CROWE, residing at Portland; occupation, agent and surveyor of the Marine Underwriters for eight years past, testified as follows:

I examined the "Jane L. Stanford." (Page 59.)

I found the vessel, after putting her on the drydock, to have apparently hit with her heel on a sandy bottom; about thirty feet of the outer shoe and ten feet of the inner shoe on the heel were torn off the whole length, the whole after end of the vessel, extending to about *to about* one-third of her [67] length. The vessel was all shaken in the seams (page 61); the butts along the bottom and all over the vessel were more or less started; the keel in several places on the places mentioned before, the pieces of shoe split off

(Deposition of Albert H. Crowe.)

and in some places cut in deep enough to take off or scalp off the keel; in the vicinity of the foremast, underneath the foremast on the port side there were two pretty deep cuts and the planks bruised and cut in two and a quarter inches deep. The keel right opposite that place was slightly damaged; and the shoe for a distance of about ten feet badly split up; right across the starboard side of the planks there was one bad bruise and a score of considerable length; these latter damages were fresh and had apparently been made by the vessel going upon sharp rocks; also places damaged along the keel to about within thirty feet of her heel; the stern post was found set about one-fourth of an inch in the ship's counter; rudder not working true; steam pumps out order; I think that comprises about the damage. (Page 62.)

Deposition of Albert Crowe, for Libelant.

ALBERT CROWE, a witness for the libelant, testified on page 64 of the same set of depositions as follows:

Before the injuries the "Jane L. Stanford" has been a specially strong built vessel, strong and in splendid condition. One of the best kept vessels that I can go aboard in a year.

The injuries enumerated were all in my opinion due to the accident on the Grays Harbor bar.

Q. Can you state the cost of making these repairs?

A. I have O. K.'d bills, I think, to the extent of

(Deposition of Albert H. Crowe.)

about \$5,200. I haven't kept an exact record of them. [68]

On cross-examination he said:

The height of the keel is about twenty-six inches; up to the garboard strake. (Page 67.)

There was some injury to the planking on each side of the keel. I think under the foremast the floor of the vessel is pretty flat. I think it would be about three feet up on the plank; three feet, two inches. So that would be up about three feet; from the lower level of the keel; about three feet and two inches, and that was on the port side; on the starboard side it was just little bit higher. If the keel was resting on the bottom these injuries would be three feet above the bottom. Undoubtedly these injuries were made by sharp rocks on each side. I do not think the other injuries to the keel were made by sharp rocks. No, sir; on the hull they were apparently made by the sand; looked as if whole of vessel just grounded on the sand; I would take it that way. The keel is protected on the lower part by a shoe. This vessel had a four-inch and three-inch shoe. (Page 68.) a double shoe; one on top of the other; seven inches of shoe and the keel was about twenty-six inches; the keel and the shoe was about twenty-six inches; it is not a serious matter to replace a shoe; the shoe was injured up forward of the foremast; it took in two or three cuts when it was repaired by putting in one to cover that length in about three other places, grainy places we call them, sort of split in the casing of the keel; we took and put in new ones

(Deposition of Albert H. Crowe.)

and renewed the whole length in some places; only two or three, and in three or four places we patched them; on the after end of the vessel we put in about ten feet in one length. That is the shoe; the keel itself was very little damaged. This shoe, or rather these shoes were for the purpose of protecting [69] the keel from injury. I never saw a double one before. Been born in the shipbuilding business, but I never saw a double shoe until I saw it on this vessel. (Page 69.)

Put over bottom of keel to protect the keel. About all the damage that we repaired was to replace these shoes and make a couple or three slight repairs to the keel, planking and rudder. We grave-pieced the planking where it was cut on the rocks; about four places on the keel and three places on the planking. I am not positive; I really don't remember whether the starboard one was repaired with grave piece or smoothed out. (Page 70.)

Deposition of Mrs. Peterson, for Libelant.

Was aboard the "Stanford" in October, 1911. "Stanford" went aground at night; did not know any difference; no pounding. (Page 73.) Captain Johnson came and pulled us off. I remember the ship striking on the bar. (Page 74.)

On cross-examination:

Did not know when vessel went on spit; think it blew a little; we got off early in the morning; it was after that, that the mutiny took place. Practically all the crew left; yes, we got a new crew; I saw the

(Deposition of Mrs. Peterson.)

planks that were marked up; I think they were on the starboard quarter; the marks on the planking were up on the round; I wasn't down on the drydock. I was up on the side where we get aboard and saw it. (Page 79.) I could see the mark there where you looked down over the side. Well, I couldn't tell really how high above the keel these marks were; they might have been above my head, if I was standing alongside. Yes, or just about level. [70]

Testimony of Respondent.

Testimony of Captain Chris Olson, for Respondent.

I live at Tokeland, Pacific County, Washington.

I have been going to sea since 1877.

I have been master 27 years.

I have been master of a boat 27 years. (Page 3.)

I towed in and out of Grays Harbor continuously for 20 years, and off and on for about 7 years.

I was first employed by Preston & McKinnon on the tug "J. M. Coleman."

I began towing in and out in 1887, and I towed over Grays Harbor bar from 1887 to 1907, twenty years.

I towed out several hundred vessels anyway. (Page 4.)

I was in charge of the tug "Astoria" for 9 years.

I was on the "Cudahee," and the "Daring," the "Traveler," and the "Printer," but I can't tell you how long I was on any one of them.

During all that time I had a master's license, and I still have a master's license.

I recall the time that "Jane L. Stanford" was

(Testimony of Captain Chris Olson.)

towed to sea some four years ago, in 1910. (Page 5.)

Well, there were several vessels bound down there ready to go out, and there were 3 tugs or 4, but they were all down looking at the bar and came back. And I had been down once and looked at it, and it did not look bad at one end, but the other end did not look like a safe proposition and I went back and waited for more water, and went back.

I wanted to satisfy myself, and I went back and looked at it the second time and at that time the bar was passable as I [71] thought, and I turned back and hooked onto the vessel.

I went down to what they call the narrows and looked at it, and from there I could tell what the bar was.

I returned and hooked on to the "Stanford" and towed her to sea.

I cannot tell you what the other tugs were doing, because I only could go on my own judgment.

I followed the channel as near as I possibly could, because you are working out on a range and what we call the lone tree down there, and the red buoy and with these two lines it was the best place at that time, that particular range.

That was the best channel at that time, although it depends a good deal upon the tide. But this time it was the best place for the reason that there was a westerly swell on and it makes it easier, but if there was a southerly wind it would have been the other channel, but there was more water there and it was the better channel at that time.

(Testimony of Captain Chris Olson.)

Yes, I saw the "Stanford" when she was going out.

By looking at the range I was watching the vessel.

The master of a tug watches his tow, yes, and sees whether or not he goes in the right channel.

The range referred to was astern.

In watching the range I was watching the vessel all the time.

I had been towing through that channel the whole summer, except *except* about four weeks that I was up the river towing, but outside of that, I was towing up the channel every day or every other day.

I was towing through this channel and other channels; we were always hunting for the best place; it was a very deep running vessel and we were always looking for the best place.

Yes, I have struck two vessels on the bar in my career.

When a vessel touches on a bar, by watching them close you [72] can tell right away. I have been able to do so and I have never heard of any vessel striking that I have towed out unless I have been able to tell it myself. The vessel has a peculiar motion; it kind of stops sudden and furthermore you can tell by the hawser, and at that time they have a sensitive jar or motion that you can tell right away.

The tow-lines play out.

If a vessel touches on the bar there is an extra heavy strain; you are bound to take the momentum a little bit and you can tell by the hawser right away.

I did not notice any such sensation from the "Stan-

(Testimony of Captain Chris Olson.)

ford" touching when we went across the bar.
(Page 8.)

I took sounding on that day. The captain told me that he had four fathoms and a half, or 27 feet.

The boat was drawing nineteen feet ten forward and twenty feet two aft.

According to my judgment a depth of 27 feet or four fathoms and a half is sufficient for a vessel drawing twenty feet two aft. That is plenty of water.

The condition of the bar is sand, sandy bottom.

I never knew of any rocks or other similar hard substances having been discovered or found on the bar.

There are no rock head-lands within a considerable distance on either side of the bar.

The first head-land with rocks on it on the north side would be Point Granville and on the south side would be Cape Disappointment. It is about forty miles to Cape Disappointment and about twenty miles to Point Granville.

A. No, sir; I did not observe any movement or any shaking of the mast or top hamper of the vessel as she went over the bar.

I think such a movement would have been seen by me if the [73] vessel had touched on the bar or bumped on the bar with any force. (Page 10.) I was not intoxicated on that day and had not been for a long time previous to that time.

No, I was not drunk on that day, and I had not been for a long time before that day.

(Testimony of Captain Chris Olson.)

I had not been drinking at all. (Page 11.)

Cross-examination.

While the "Stanford" was lying down on the harbor I was employed on the Government dredge.

I left the dredge as soon as we got through with the work there, I think the first or second of October.

I took the "Cudahee" after leaving the dredge.

I had been on the "Cudahee" about two weeks before I took the "Stanford" out.

During that time the bar was pretty rough. I had no opportunity to tow any vessels at all. We did inside work.

The day that we went out was the first opportunity that vessels had to go out. (Page 12.)

No, the channel was not new; we had used it during the summer.

The north channel was the old channel, that was the best known channel that was marked straight through.

The south channel was not new to us because I had used it during the summer.

The channels don't change much, they don't change quite as quick as that.

I think this south channel was used in June; I am certain I used it in July.

I remember one special tow we took in there and we felt a little bit uneasy about it, it was an old ship, the old ship [74] "St. James"; we didn't know which channel to take, but we would get the benefit of the channel if we took that channel. I remember it was in July; I don't remember whether it was be-

(Testimony of Captain Chris Olson.)

fore or after the fourth.

Q. That channel, however, was not buoyed.

A. There was one buoy they started there. (There was one buoy they started from.)

There was a red buoy, the outer red buoy. That was a mid-channel buoy.

The general bearing of this south channel; it went southwest or south by west, but I couldn't give you the exact course out. As long as you could see the range, you went by that range and the current is so familiar there that you can always steer on a direct course.

That range was laid by the red buoy and the lone-tree on Damon's Point. You got your range after passing the red buoy.

The actual crossing of the bar would be probably four or five hundred yards from the red buoy. (Page 14.)

That is by this channel I could not tell you the exact distance.

I was on the dredge about four weeks. Before I went on the dredge I was on the tug "Printer"; I left the "Printer" to go on the dredge.

I have always worked as a tug captain for this same company. I worked for Preston & McKinnon and then the Simpson Lumber Company and then for this company. I worked for the other companies before this company was formed.

I am not now working for the Gray's Harbor Tug Boat Company; I am working for the American Pacific Whaling Company (Page 16). At the time I

(Testimony of Captain Chris Olson.)

took the "Stanford" out the wind was from the north-west and the swells were coming from the west north. [75]

It was better to use this channel with a northwest swell and anybody that has been around the bar for 25 years can pretty near tell the best place by the swells and the way it acts. You gain this knowledge from your own observation.

Q. Captain, how did you come to use this new channel, is it charted, and were the soundings marked on the chart and furnished to you, or did you simply gain knowledge of it by navigating it?

A. Yes, you gain knowledge by navigating and anybody that has been around the bar for twenty-five years can pretty near tell the best place by the swells and the way it acts.

Q. By the water you can tell?

A. Yes, I wouldn't be afraid to go over any bar, I could pick out the swells and pick out the best water.

Q. That is the information you gain from your own observation? A. Yes, sir.

Q. Of course, that don't tell you the depth of water at every particular point; it just shows you where there is the deepest water?

A. Yes, sir. (Pages 16-17.)

At that time on the average tide we had about 24 or 25 feet of water in the north channel, and in the other channel. In this south channel we would consider there was about 3 feet more water. I was towing barges in and out during the summer.

(Testimony of Captain Chris Olson.)

I would consider them vessels, only, they were dismantled.

I don't think I towed any sailing vessels. (Page 17.)

I could not tell how many barges we towed in, sometimes we would get one every day, and sometimes two a day, and sometimes there would be two or three days that we would not have any.

They were working on the jetty at that time.

They all came through successfully; we had no accidents with any of them. [76]

We touched bottom once with one of them, I don't remember which one it was, but there was no damage done.

I didn't know that a barge was lost on the bar; there was steamer lost there, the steamer "Collier." (Page 18.)

I have no knowledge of a barge that came in and capsized or floundered there with a cargo of stone. (Page 18.)

Q. What kind of a hawser did you have on the "Stanford"?

A. We had a wire hawser and towing machine.

Q. You had only the one line? A. Yes, sir.

Q. And the towing machine, as I understand it, is automatic, it pays out automatically?

A. Yes, sir. (Page 19.)

No, the bar was not breaking on that day, there was no sign of a break on. It was an ordinary north-west chuck.

We crossed out with the "Stanford" about one

(Testimony of Captain Chris Olson.)

hour before high water, and according to my best experience, that is the best time to cross the bar, because at that time you will not have any more raise on the bar. (Page 20.)

Before that time it keeps on raising, the tide gets higher.

According to my experience, the best time is one hour before high water, and an hour after that is not the best time.

Two hours before flood tide is not the best time, then you don't get all the raise. What I mean; according to the tide tables everything after an hour before high water, the water you get on the bar don't amount to anything; there is no raise on the bar after that. [77]

When I went and looked at the bar I went and tied up, but I can't recall whether I tied up near the "Stanford" or whether I tied up at Westport.

When I looked the second time it was about an hour's flood as near as I can recall it. That would be about noon probably.

I figured that the condition of the bar at that time, that by one hour before flood tide she would be all right.

I simply wanted to get high tide.

No, I have not been a drinking man. I have had a few drinks and have probably felt it a few times in my life like a good many others have. (Page 22.)

Yes, there were two more vessels going out over the bar that day. They were the "Americana" and the "Fred J. Wood." They were both smaller ves-

(Testimony of Captain Chris Olson.)
sels than the "Stanford."

The "Daring" towed out one, and the "Printer" had the other one. The "Printer" is about the same size as the "Cudahee," but it has not got the power that the "Cudahee" has. The "Daring" is a larger boat.

When we crossed they were probably two miles out.

Capt. Johnson was on the "Daring," and Capt. Erickson was on the "Printer." (Page 25.)

I did not speak to those captains during the day.

If they had told it was all right, it would make no difference, to me, I would go out on my own judgment.

When I went and looked at the bar, I went to the narrows, about two and one-half miles from the bar.

If someone else had told me the bar was not suitable for towing out, if I was not able to see the bar, I might have taken his signal, but if I was able to see the bar, I would have gone [78] on my own judgment; I believe a man should use his own judgment about that.

When I went out I kept within the range as near as I possibly could.

When we passed the red buoy, you put your tow on the range and go out on that.

No, sir; I don't know whether the "Stanford" struck or not.

After we got outside the captain of the "Stanford" told me it struck. He waited for me to come alongside, when he told me he had struck.

(Testimony of Captain Chris Olson.)

That was the first I knew anything about her striking and I was very much surprised to hear it at that time.

The average draught of the barges that we towed were 19 or 20 feet.

We always ascertain the draught of the vessel before taking her out on the bar.

The south channel is in use at the present time.

It has not been in use continually since that time. (Page 27.) No, I did not report to the Grays Harbor Tug Boat Company that the "Jane L. Stanford" had struck. I did not report to the office of the Slade Lumber Company that the Stanford had struck.

Captain Peterson told me that he had struck.

I couldn't hardly believe it, the amount of water there was there, and I asked him if there was anything wrong and he said no, and he went about his business and I thought there was no more to it and I didn't know that there was anything to report.

I have seen, and I know of a few cases, that makes me think that it is a common practise among some of the skippers to endeavor to get their boats overhauled or repaired at the expense [79] of the tugboat company, if possible. (Page 31.)

Q. Now, referring to this channel which you followed and which counsel has referred to as the new channel, that channel has been open before, that is, in other years that channel had been used or a channel at that place?

A. The channel had been there during the sum-

(Testimony of Captain Chris Olson.)

mer previous to that fall; the summer of 1910.

In going over the bar we always take soundings, especially in going out.

When we tow a vessel out we always take soundings.

Q. I understand you to say that this channel had not at that time been buoyed by the Government, is that correct?

A. That is correct. (Page 31-32.)

Yes, sir; it is the practice of the tugboat captains to keep constantly informed regardless of the Government buoys, as to the best channels in and out of the river. (Page 32.)

(Page 33.) I never heard of any barges being wrecked on the bar, loaded with rock. If there had been any such obstruction as that on the bar I surely would have known it.

The barges which we towed during the summer were dismantled ships, the old Clipper ships dismantled. They were used for carrying rock from Puget Sound to Grays Harbor.

This rock was taken inside the harbor and discharged on a wharf and then taken out to sea by rail.

The tonnage of those ships was probably from twelve hundred to sixteen hundred tons, I guess.

They were a great deal larger ships than the "Stanford," some of them were more than twice the tonnage of the "Stanford."

I never heard of any rock either from a scow or from one of the barges being lost out there in the

(Testimony of Captain Chris Olson.)

south channel. I never heard of any. [80]

The south channel is quite aways, a mile or more from the nearest jetty. About three-quarters of a mile.

Deposition of H. K. Johnson, for Respondent.

Been going to sea 43 years; been towing out of Grays Harbor for twenty-five years; now master of Grays Harbor Tug. Remember the "Jane L. Stanford" going ashore on spit. As soon as tide floated her she commenced to pound. He started her off. She pulled off hard. They all pull off hard when they go on, on flood tide broadside (page 104); it was not what we call smooth (on the 25th); nothing breaking; and no large chop on. I passed right by her ("Stanford") going out; the channel used was the proper channel; I would use the same channel; I have known Captain Olsen for 33 years; I have worked along with him as master of one of the tugs and I worked as mate for him (page 105). He has always been considered a capable navigator since I knew him; I hired him to go up on drydock when he took the "Cudahy." No, the Company did not make a fuss and object; they did not say a word. It was only temporary; there were three captains and we needed a fourth man. Olsen had just left the "Printer" three weeks before that; he had been towing deep vessels with it. Drawing 18 or 19 or 20 feet; I have observed a great many vessels ground on a sand bar in the harbor. Once in a while I have seen vessels lose their shoes down there and another spring

(Deposition of H. K. Johnson.)

a leak, so we had to put her on drydock; that was three or four years ago. It was pretty rough water. It is always rough on spits on a rolling swell. A vessel of the size of the "Stanford" and laden with lumber and pounding on a sand, is going to damage herself. Her seams are going to open. (Page 108.) I think I pulled on her probably near an hour or something like that; I turned her over to the "Traveller." Yes, I heard a dozen say she bumped. (Page 109.) I can't say; from the way the "Jane L. Stanford" on the bar (beach) there, whether it was serious enough to spring every butt on the ship and open up all the seams. I can't say she might have met with all kinds of things before I came. If she had made [81] three or four feet of water I think I would have heard of it. (Page 110.) I heard she should have gone on the dryrock here. She was too big for the ways down here. Yes, I say she was pounding on the bar. Yes, you take any vessel laying on a bar will pound, with the flood tide coming in. You need not tell me about the spits down there, I can tell you lots about it. I say the "Jane L. Stanford" was on a bar and was pounding; yes, sir; she had a list. (Page 111.) I went over the bar ahead of the "Stanford" on the 25th. We call it smooth when the bar is in that condition. I towed out the "Fred J. Wood." She draws a couple of feet less than the "Stanford"; we were quite a bit ahead of the "Stanford"; the "Cudahy" was at the red buoy when I came over the bar. I

(Deposition of H. K. Johnson.)

could see her; the "Printer" towed out the "Americana" that day.

In the testimony taken by Dan Pearsall, United States Commissioner in the City of Aberdeen, Captain H. K. Johnson, master of one of the respondent's tugs operating on the bar at the time of the accident to the "Jane L. Stanford," gave testimony on cross-examination, appearing on pages 113 and 114, as follows:

There was no other tug out on the bar when I towed the "Wood" out. The "Cudahee" was at the red buoy at the time I came over the bar.

Q. Did you know that the "Cudahee" started out?

A. Yes, sir.

Q. You could see her? A. Yes, sir.

Q. Did you signal to her with your whistle?

A. I whistled to her, yes, sir.

Q. What did you whistle for?

A. Well, I whistled, I thought there was a swell on and they all signal to me lots of times when too much swell on, but I go on about my business. [82]

The channel changes, yes. We have the south channel now, as when I towed out last July it is the same to-day as last July. I had no buoy either, only looking in the woods. I know of no cargo of rock that was ever unloaded or wrecked down there. I never heard of any load of rock dumping in there. I never heard of any rocks. (Page 114.) There were no rocks lost there when they were building the jetty. Rock will not last long in that soft sand. They will fall in the water tomorrow and the next day they are

(Deposition of H. K. Johnson.)

gone. The steamer "Tullis" was lost there seven years ago, and there is 40 feet of water where she was lost. I think rock or anything of that sort dumped on that sand would go right down.

Testimony of George Chicoine, for Respondent.

My home is at Dalles, Oregon.

I am not now employed by the Grays Harbor Tug-boat Company. (P. 35.)

I was chief engineer on the "Cudahee" in October, 1910.

I watched the "Stanford" as she went out over the bar.

It was my duty to watch it, the engineer is supposed to watch all the time when we go over the bar, watch the vessel and watch the tow-line.

It is part of my duty to watch the vessel and the tow-line and the engine.

I did not observe anything that would indicate that the "Stanford" touched on the bar.

The signs that indicate that a vessel has touched on the bar, is as near as you can tell, when a vessel strikes you can see the rigging shaking and fetching up on the tow-line, and a jar on the tow-line. (Page 36.) [83]

I didn't notice that there was any tightening up on the tow-line on this day.

I didn't see the rigging shaking.

The bar was fairly good, I have towed on lots worse bars than that, a good deal worse, in fact there were two tugs towing out that day with other vessels.

There was no condition of the bar that day to

(Testimony of George Chicoine.)

warn a tug not to cross the bar. (Page 37.)

The "Stanford" was towed out through the usual channel. The usual channel that we always towed through.

I know Captain Olson; I have known Captain Olson about 18 or 19 years.

I have shipped with him before this time in October. I have shipped with him several times.

On this day the man was sober.

As a capable master he is a first-class man, and I have always heard that he was one of the best tugboat captains on the coast, I have heard that many times.

I have served or shipped with him about 3 years altogether, within the last 18 years. (Page 39.)

Cross-examination.

The "Stanford" grounded while she was bar-bound in the harbor.

I don't know about the bottom which she grounded.

The Sand Island on that side is supposed to be hard sand.

I know she ran aground and drug her anchor. That is what they claim.

I have known Captain Olson for about 19 years, I know about his habits. I know the man drinks, yes, sir. (Page 40.)

When you cross the bar the chief engineer on a tugboat, he has got to watch the tow-line all the time and work his [84] engine according to the swell, sometimes you stop your engine dead or go at full speed or half speed according to your own judgment so as to work on the line, not to break the line, that

(Testimony of George Chicoine.)

is the duty of engineer at that time. It took about fifteen minutes to cross the bar and have to be right there on the lookout for the vessel and not break the line and I was there all the time looking at the vessel and the tow-line.

The first indication you would have if a vessel struck bottom, is you can see your rigging vibrate and your tow-line fetch up and the tug will give a jar.

Your tow-line is taut all the time. (Page 41.)

If a vessel just touched you would have a jar on the tow-line, yes, sir.

We had no jar at all on the tow-line on the "Stanford" on the way out. It went very nicely outside, that is my belief, that there was nothing happened when we crossed and I was surprised when I heard a report that she touched.

I have been engineer on a tugboat when the tow grounded.

I don't know how many times, but quite a few times.

I have had all kinds of trouble.

When they do strike you can tell right away by the rigging and the tow-line.

If you didn't happen to be looking at the rigging you can notice by the tow-line, there will be a jar, it would fetch up.

I was surprised to hear that she struck, that is all I know.

I have towed out over the bar on rougher water than we had this day. Yes, I have towed a vessel

(Testimony of George Chicoine.)

the size of the "Stanford" over a bar worse than that.

I had been through this south channel a number of times before I towed the "Stanford" out. [85]

I can't tell you how many times. I have not towed for a long time through there.

I don't know anything about any rock that was dumped out there in that south channel. (Page 42.)

Well, my part of the work was in good shape, the engine was in good shape and running and everything was in first class condition and I was doing the work inside. I haven't anything to do on the outside, I can't say anything about that part of it, I have nothing to do with that. My duty is just running the engine and looking after the line on the bar. On a rough bar in and out that is our place to look at.

At that time we had an old-fashioned hawser, we had no towing machine.

If there had been a cargo of rock dumped on the bar, I believe I would have heard of it.

I never heard of any rock on that bar.

I saw the "Stanford" aground. She must have been hard aground if it took two tugs to pull her off. She listed a little bit. (Page 34.)

Testimony of C. L. Davidson, for Respondent.

My name is C. L. Davidson.

I worked for the Grays Harbor Tugboat Company for about 5 years.

I am not employed by them now.

(Testimony of C. L. Davidson.)

At the time the "Jane L. Stanford" was towed to sea I was firing on the "Cudahee." (Page 45.)

Well, the best that I can remember about it was that we went down that morning from Hoquiam, if I remember right, and went out and looked at the bar and went back up and it seems to [86] me we went up to the Westport dock and stayed there for the tide and then we went back and took a second look and went and got the boat and started for sea with her and we got out alright, I didn't see anything unusual.

The bar was not very rough; it looked like it was fairly good.

We towed out through the south channel, that is the same channel we had been going through most of the time.

I had been on this tugboat about three years off and one, prior to this time I towed the "Stanford" out.

I watched the "Stanford" as we went out. That wasn't a part of my duty, but I was interested in the work and I watched it.

I didn't see anything that indicated it touched on the bar. (Page 46.)

If she thumped on the bar her rigging would shake like and her hawser would have played out.

I didn't see anything to indicate to me, at all, that the "Stanford" touched on the bar. I was standing on the deck where I could see it all the time.

The second time we went to look at the bar there was nothing unusual about the look of the bar that would warn a tugboat captain not to go over it.

(Testimony of C. L. Davidson.)

There was no unusual condition about the bar that we observed as the "Stanford" was going over.

It generally takes about ten minutes to go over the bar, or something like that, that is, from the time your tug gets on the bar until your schooner goes over it. You take it a little easy as you go over there, the engineer holds the engine down some. (Page 47.) Captain Olson was not intoxicated on this day. He had not been drinking at all on that day. [87]

I have known Captain Olson for about 10 years. I was shipmate with him, first in 1907.

I was with him 5 or 6 months at that time and I have been twice since then with him, I served six months with him since then, I was six months straight and another time I was with him a couple of months and so altogether I have served about fourteen months with him.

I have chief engineer's papers at the present time.

With regard to Captain Olson's ability as master of a tugboat, I will say that he is the best on the coast.

Cross-examination.

I was fireman on the "Cudahee."

She is an oil burner; yes, sir.

I was not on watch at this time.

I had nothing to do with the navigation of the vessel.

I don't think the "Stanford" struck on the bar going out, if she did I didn't see anything to indicate her striking.

(Testimony of C. L. Davidson.)

I was watching the "Stanford" all the time going out.

I was watching to see what she was going to do.

The "Stanford" is a pretty large vessel, I would judge she would be of pretty big draught. (Page 50.)

My recollection is distinct as to the "Stanford," because I watched her on the way out, and what I remember the captain saying she struck on the bar when we came back in, and I remember that vessel more than any of the rest of them.

It is not exactly common, no, for vessels to ground in the harbor, but sometimes it will happen.

One was down there they had to unload, what was the name of that vessel now, Captain Rock was on the schooner but I [88] don't remember her name, it seems to me it was one of the Vance schooners, they had to take the cargo most all off of it and bring her back here. I think she went on drydock, I am not positive, but I think she went on drydock.

As to the nature of the bottom down there, it seems to be sand as far as I could see at low tide. I have not seen a number of them.

Some of the sand spits have logs; yes, sir. (Page 53.)

I never heard of logs or other hard substances on the bar.

If there had been any obstruction or danger on the Grays Harbor Bar which would result in chopping up the bottom of a vessel which would touch on the

(Testimony of C. L. Davidson.)

bar I would be apt to have heard of it, but I never heard of anything of the kind at all. (Page 55.)

Testimony of Otto Rohme, for the Respondent.

OTTO ROHME, a witness for respondent, testified as follows:

I was on the "Cudahee" at the time she towed the "Jane L. Stanford" across the bar. I was a deckhand and sailor. The mate was Oscar Olson. He is now dead. I saw the "Stanford" as she went out over the bar. I have been going to sea since 1888. I started with the company down there in 1909. When the "Stanford" went over the bar, I was standing in the doorway, right by the tow-line. (P. 57.) My duty was, when there was a heavy swell, you would have to give slack on the line so it would not break the line. I was standing there giving slack on the line so it would not break. It was my duty to watch the line, and when there was too much strain on it to slack it up so it would catch up solid again. I watched that line all the way across. I did not see anything at that time to indicate that the vessel touched bottom. If the vessel touched the bottom, it (the line) would go out like the devil as fast as it could go. We would have to throw water on the [89] line or else it would burn up. The effect on the masts of a vessel would be that they would shake like that (indicating). (P. 58.) I did not see any shaking of the masts on the "Stanford" as she went out to indicate that she touched bottom. The line did not run out or tighten up at any time.

(Testimony of Otto Rohme.)

There was eight foot slack and she never took up an inch when they claim she struck. I saw the "Stanford" during the time she lay inside the bar waiting to go out, yes, sir, every day. She drifted ashore one night on a sand spit. When I first saw her, she was hard aground because the tide was out, but when the tide came in she was working heavy on the sand spit. I was on the "Traveller" which took her off. The captain's name was Sanborn. I can't say exactly how long a time it took the "Traveller" to pull her off (P. 59), but we had to hold on to her eight or ten hours to get his anchors cleared out. He had to heave them up. They were twisted. I couldn't tell where they were lying, I couldn't get close enough for that. It took eight or ten hours to get his anchors clear and during that time the tugboat hung onto her. I was there all day. It looked to me that the anchors were close to the vessel; of course, I couldn't exactly say as she was hard aground and the chain was leading in most any direction, but you couldn't tell where the anchor was leading. I don't remember the exact date it was before the "Stanford" went out to sea. It was four or five days before. I know he had to sign up a new crew. His crew refused to work any longer and they were locked up on the forecastle (P. 60.) The captain told us about the trouble he was in (P. 61.) I should say his crew left him ten or twelve days before he went out. We held onto the vessel practically all day the day she went aground. (P. 61.) The

(Testimony of Otto Rohme.)

“Daring” was alongside of her when we got there. I think the wind and storm drifted her. [90]

On cross-examination, he said:

I am a Norwegian. I was on the “Traveler” the day the “Stanford” went aground in the harbor. We hung on to her for ten or twelve hours. I am positive of that. (P. 62.) The water was rough inside the harbor when she went aground, very rough. When the tide came in she was thumping hard. There would be a lot of jar on the boat and it pounded her a lot and shook her up. I would say it would shake her seams loose. No, it was not hard to get her off because the storm helped to pull her off. No, sir, she was not on the sandspit ten or twelve hours. I never said that. (P. 63.) I said we were hanging on to her all day until she got her anchors clear. She went aground that night. No, sir; I did not see her go aground. The captain and the mate told me that they went aground that night. The captain told the skipper he had a mutiny on board. When you are on a little boat, you can hear whatever is said sometimes. I don’t know what time she went aground. It is a sandy beach where she went ashore. (P. 64.) She got off in the morning. We left Hoquiam in the morning, I don’t know what time, exactly, about nine or ten o’clock, I guess, perhaps a little earlier, I can’t say for certain. We hung on to her from nine o’clock in the morning until into the afternoon. She was bumping hard on the sand. It is rough down there when the wind is blowing, you bet it is. I was on the “Traveler”

(Testimony of Otto Rohme.)

at the time. Yes, we hung on to her ten or twelve hours. Yes, sir; we put her in anchorage when we got her off. It did not take him long to pull her off, half an hour I guess; no, not an hour. It did not take him very long to take her off after the water came. (P. 65.) I don't think it took him over half an hour. When he went aground, he went aground with both of his anchors out. I can't say exactly how far he drifted. Maybe seven hundred feet. That would be [91] about two hundred yards. I saw him when he was anchored and bar bound and he must have drifted about seven hundred feet. That would be about two hundred yards. He had out all of his chain on one anchor. I don't know how much chain he had out on the other. He had quite a lot and it was around the anchor. He took his anchors right with him when he drifted. (P. 66.) He took all the chain with him. The chain was twisted around the anchors. That is how he got adrift, he started with the tide and got the chain around the anchors. That was the same with both anchors. It took a long time to get the anchors clear. That is why we hung on to her, we couldn't let him go and go on the beach again.

In towing across the bar you usually allow eight or ten feet for slack. No, when you play that eight or ten feet you are not at the end of your line. You have two-thirds of it out and a third back. You just give that slack on the bit. You always keep six or eight feet. If you see the line tighten up too much you give her some. If you do pay you allow him

(Testimony of Otto Rohme.)

about eight feet slack, a little better than a fathom; that is seven or eight feet. You can't be exact to the inch. You don't measure. (P. 67.) It is part of my duty to keep the line taut. You can't pick up any slack, but you can pay out and just keep it taut. When we were towing the "Stanford" out, the line was in the water and when she tightens up that is the time you have to have your slack, so she won't break.

All I saw of the "Stanford" was when she was aground was when I was on the "Traveler" and we pulled her off. We left here earlier and got hold of the "Stanford" about nine o'clock. We couldn't get to her when we first went down because it was low water. We generally leave here about seven and it took an hour to go down there. We got hold of her about nine [92] o'clock. It might have been a little later, about nine or ten in the morning or something like that. I can't exactly remember it was so long ago. Yes, and when the water came in she was pounding pretty heavy. (P. 68.) She had a pretty heavy list when we first went down there, about this way (indicating). That would be about forty-five degrees. Yes, when the tide came in, she was rolling on the swells and she would lift up and then come back again. When she would hit bottom and roll there you could see the rigging shake. She was loaded; yes, sir. Yes, she pounded there for several hours. She couldn't get up there on low water that is a cinch. There might be an old anchor there or something. I am on no boat at all now. I

(Testimony of Otto Rohme.)

have been off the boat since last February. I am doing nothing at present. I have been on all four of the tugs. (P. 69.) I have seen other vessels aground on the harbor here. I have seen them pound and did considerable damage, some of them. Some were easy to get off and some were not. Yes, it took us five days to get one off once. When a vessel goes aground and pounds on the beach it is not usually easy to get them off. It took five days to get one off. Did she pound? Sure she did. I have seen other vessels pound on the beach and it was easy to get them off, when it was rough. Yes, the captain had to lock the crew in the forecastle. I don't know whether they were afraid. (P. 70.) They refused to work. I don't know whether they were afraid the vessel was going to pound to pieces. He had to lock them up for mutiny. That's all I know about it. I don't know whether she was pounding so hard and so heavy that the crew got afraid and started a mutiny or not. I heard what the captain said. I didn't say I spoke to him. (P. 71.) [93]

**Testimony of Otto Rohme, for Respondent
(Recalled).**

OTTO ROHME, being recalled by respondent, testified as follows:

Captain Olson was not intoxicated on the day in which he towed the "Stanford" out to sea.

On cross-examination, he said:

I am a member of the Seamen's Union. I know

(Testimony of Otto Rohme.)

Capt. Petersen. I was not a member of the Seamen's Union at that time. (P. 123.)

Witness excused.

Testimony of George V. Sanborn, for Respondent.

GEORGE V. SANBORN, a witness on behalf of respondent, testified as follows:

I have lived in Hoquiam fifteen or sixteen years, I have been going to sea since I was fifteen years old and am forty-seven now. I have been going to sea about thirty-two years. I have been master about eighteen years. I have been master of tugs for thirteen years, pretty near fourteen years. I remember when the "Jane L. Stanford" went aground on a sandspit below sand island. I was master of the "Traveller" at that time. I remember of assisting in towing her off. The tug "Daring" helped me. (P. 81.) I think the "Daring" towed her off stern first and I took hold of her bow and held her while he got his anchors. I think it was about four or five hours that we had a hold of her altogether. She came off quite hard. I observed her before she came off and she was apparently pounding. I made an entry in the log of pulling her off the place she was to safe anchorage. The bottom where she went aground was sandy, hard, sandy bottom. I think it was about nine o'clock when she came off. It is quite a while ago, but it was around nine o'clock. The trouble seemed to be with his anchorage. While he was clearing his [94] anchors, his anchors were foul. One anchor

(Testimony of George V. Sanborn.)

laid in quite far in shoal water and we tried to hold him off from swinging all we could until he got hold his anchor. I forget whether he had both anchors down or not, anyway one was quite foul. (P. 82.) It was high water and he was right over his anchor. I was not down at the bar on the 25th when the "Stanford" went out. I don't know anything about the weather or circumstances on that day. I was acquainted at that time with what is called the new channel or south channel, out of which the vessel was towed on that day. It was the customary channel at that time for towing vessels of that depth. The channel at that time was deeper than the north channel. I can't give you the depth in feet. It was so much deeper that we used it. We abandoned the old channel and towed in the new channel. (P. 83.) There are no rocks near this channel, I know that.

Q. Captain, if after this vessel was put up on the ways she was found to be in this condition: A part of her show after and forward was gone; part of the keel injured by striking on the rocky bottom; all the butts and all seams aft from keel to cover board were started, and quite a number of seams fore and aft on the whole length of the vessel had started, the water gudgeons were slightly twisted, then we found the steam pipe from the pump had broken off during the jam, had broken off just below the deck and some of the planks forward were cut just like a sharp axe had come down on them; they were cut and we had to put pieces in them, had to put pieces in there, quite a few of them. I will ask you, Cap-

(Testimony of George V. Sanborn.)

tain, to state whether in your opinion such an injury is likely to have happened on the Grays Harbor Bar.

A. No, sir; there are no rocks on the Grays Harbor Bar, the only rocks that were around there was what they were putting there for jetty works, it was all sandy bottom.

Q. Now, I will ask you this question, assuming this vessel went ashore on a sandspit some days previous to the time she crossed the bar and that she afterwards crossed over the bar and at some time received the injuries she is claimed to have received, which Captain Peterson has described, I will ask you which is the most probable as to whether or not she received those injuries on the bar or on the sandspit, assuming that she received such an injury as Captain Peterson described. [95]

Mr. HANFORD.—I object to the question as it calls for the opinion of the witness and is *competent*, irrelevant (P. 84), and immaterial. I have no objection to counsel asking the witness what he knows of the damages stated but it is incompetent to ask a hypothetical question in that form.

Q. I am asking his opinion. Just state, Captain.

A. If there is no rocks on the sandspit where she was, I would say that she laid on her anchor; that is the way I would express my opinion if her bottom was cut.

Mr. HANFORD.—Q. You state that as your opinion. A. Yes, that is my opinion.

Q. Now, Captain, what is the usual cause of a vessel, a staunch, sound vessel such as the "Jane L.

(Testimony of George V. Sanborn.)

“Stanford,” that they suddenly found making water, it requiring the work of both pumps and all hands constantly to keep her even, with her seams started, aft from keel to cover board and her butts torn loose and her gudgeons wrenched and the steam pipe broken below the deck and her planks forward were marked from one end to the other and her shoe was torn off fore and aft and her keel dented throughout its whole length and that was found to be the condition of the vessel immediately following a severe jar while crossing the bar, what would you say would be the cause of those injuries.

A. Well, if she was marked up as bad as that I should say she must have been foul with some rocks or some hard substance that would do all that, she never could do it on plain sand.

Q. I will ask you, then, under the conditions that follow (P. 85), whether or not your opinion is that the vessel had struck bottom or rested on her anchor; after the vessel was put on drydock she was found to have apparently hit with her keel on a sandy bottom; about thirty feet of the outer shoe and ten feet of the inner shoe on the heel were torn off the whole length, the whole after end of the vessel, extending to about one-third of her length; the vessel was all shaken in the seams; the butts along the bottom and all over the vessel were more or less started; the keel in several places on the places mentioned before, the pieces of the shoe split off and in some places cut in deep enough to take off or scalp off the keel; in the vicinity of the foremast, underneath the

(Testimony of George V. Sanborn.)

foremast on the port side there were two pretty deep cuts and the planks bruised and cut in about two and a quarter inches deep. The keel right opposite that place was slightly damaged, and the shore for a distance of about ten feet badly split up, and quite a portion of it gone. Right across the starboard side of the planks there was one bad bruise and a score of considerable length; these latter damages were fresh and had apparently been made by the vessel going upon sharp rocks; also places damaged along the keel to about within thirty feet of her heel; the stern post was found set about one-fourth of an inch in the ship's [96] counter; rudder not working true, that being swung, and the steam pump out of order, I think that comprises about the damage—and the butts on the bottom and more or less all over the vessel every butt in one-third the length of the aft end of the vessel, every seam were shaken, and nearly all the (P. 86) others were more or less shaken. That statement of the damage to the vessel such as the "Jane L. Stanford" in addition to the statement of damages recited to you by Mr. Morgan would indicate what: That the vessel had struck on bottom and received a severe blow or that she had merely rested on her anchor. I ask you that as a seafaring man, Captain, and you know the construction of the ship.

A. I should say that she laid on some rocks and pounded, as far as I can see, if she suffered all that damage, she couldn't have done that by striking in crossing over smooth sand and striking a few times

(Testimony of George V. Sanborn.)

as they claim she did. She could have taken off her shoe, that has been done before by striking on the sand but she couldn't bruise her bottom up by crossing the Grays Harbor Bar.

Q. In other words you want to state—you don't state that as a fact.

A. I state it as a fact, by experience.

Q. You state it as a fact that the "Jane L. Stanford" suffered the damage of which she complains in this case by going on a sandspit down here in the harbor and not striking the bar in crossing out to sea, is that what you say.

A. What I mean to say and state it as a fact that she could not do all that damage on the Grays Harbor Bar, because there are no rocks or hard obstructions, only plain sand.

Q. Then a vessel such as the "Jane L. Stanford," 861 tons, laded with lumber by being severely struck upon the bar at one time could not damage herself to that extent. A. She could not; no, sir.

Q. That is what you state your experience is.

A. Yes, sir. (P. 87.)

I am captain of the "Traveller." I wouldn't say what time we got the "Stanford" off the sandspit. We left Hoquiam at six o'clock and it takes us usually an hour and a half, I will say to go to where the "Stanford" laid at that time and it was probably [97] a half hour or maybe a little more before I got hold of her, maybe a little longer. It is a long time to remember, four years, but it was somewhere between eight and nine o'clock. I have the impression

(Testimony of George V. Sanborn.)

it was nearly five hours we were working keeping her off. That would make it about two in the afternoon, although I do not swear to that as a fact. The "Daring" assisted in getting her off. She took hold of her before I got there, she got down there before us about fifteen or twenty minutes, I believe. I think he had just started when I got there, just started to get her off the place where she was resting and he was coming astern when we came on to her. (P. 88.) There was a pretty heavy swell. She is a pretty heavy vessel. She was pretty heavily laden with cargo. She was fully laden with lumber. You know, of course, that a small vessel will pound before a large vessel but any sea will move a vessel, the water will move her but it will not move her so quick. But the water will move her. You take a vessel such as the "Jane L. Stanford" laden with lumber, pounding on the beach she has got to open up if she is not strong enough to stand it. If she opens up she is going to have to take water. Yes, you will have to pump her out. Yes, if the "Stanford" has been damaged as you state, she has been leaking. Yes, she will leak as soon as she is opened up. She was not listed when I got there. She may have been listed during the night, but I did not see her. (P. 89.) Yes, I think Otto Rohme was a deck-hand on my ship. As soon as we got up close to her, we had to see her. We couldn't help it. I am an observing man, trained to observation; and if the vessel had been lying on an angle of forty-five degrees, lying on her side and pounding,

(Testimony of George V. Sanborn.)

I would have noticed. As far as I remember, [98] the vessel was just coming off as we came to her, while we were around her she came off. We held her off until he got his anchors. I do not know how much chain he had out. He broke the windlass I think during the time and he had some trouble with the messenger chains, in getting the (P. 90) anchors. I think he had two anchors out, I am not sure. I don't know whether he had one out to one side and one in front, they probably dragged together when they started to drag. When a vessel drags her anchors she drifts over them and pulls them after her. I am acquainted with the different tugboats belonging to the Grays Harbor Tug Boat Company. I know all of them. The "Daring" is the largest. The "Traveler" comes next in length. The "Printer" next, and the "Cudahee" is the shortest. There are four (P. 91). These tugs are still in Hoquiam. I am acquainted with the "Jane L. Stanford." Yes, I towed her several times. I don't know her tonnage. She is one of the largest vessels operated out of Grays Harbor. I presume she is a staunch ship. When the "Stanford" is loaded she draws somewhere around twenty feet. I would call that pretty deep. Yes, I have heard of other vessels grounding on the sandspits in the harbor before they cross the bar, here on Grays Harbor. It is quite a common occurrence. I have seen it a great many times before (P. 92). We had one other vessel that went on shore down there that we were sued for damages done to her since then. I don't know whether under

(Testimony of George V. Sanborn.)

like conditions a vessel damaged as she was, of her size, would shake her seams loose and the oakum out. I never examined them to see. I knew about several vessels doing damage but that is the only one I knew personally about it doing any damage. I would hate to have a vessel go ashore there. Yes, I think she suffered some damage. Yes; I thought so at the [99] time. No, I did not say anything to Captain Peterson about it. I did not see the "Stanford" doing any pumping after she was aground there. I heard that she did but couldn't say they did personally. Pumping with a steam pump; yes, sir. (P. 93.) I don't know whether they pumped right along, I say I didn't see them. If they had to pump, they would have to pump right along, if the ship would be leaking; yes, sir.

Upon redirect examination, he said:

I know that they had some trouble with the crew and that they put that crew aboard the "Hawaii," I think it was. The crew that they had left immediately after this accident (on the sandspit), yes, sir. Yes, if I remember right they shipped that crew to the "Hawaii" and the crew left the "Hawaii" and went on the "Stanford." (P. 94.) No, sir; if there were cuts in the planking some distance from the keel and pretty far forward, just off the bow at such a height that if the vessel had been lying on the sand the cuts would have been up to the height of one's shoulders or eyes, I would say that such an injury could not have been received on the Grays Harbor bar. A vessel would strike on her

(Testimony of George V. Sanborn.)

shoe or keel. It would strike on the keel first. (P. 95.) She could not do any damage to her planking by striking on a bar.

On cross-examination, he said:

I know of no obstruction or impediment to navigation whatsoever near that south channel, where the bar was at that time, no rocks. There is shifting sand, just shifting sand. The shoal part of the channel is straight. You approach the bar with deep water all the way and there is a ridge and you go off that ridge into deep water again. There is a ridge of sand at the mouth of the harbor and what they call the bar is the [100] deepest place and you cross them at right angles so it is pretty straight. It takes about a minute to cross the bar, it is less than a thousand feet perhaps. The depth of the water approaching the bar we maintain at forty-five feet and it gradually (P. 96) shoals up to the bar and the shoalest part we call it about three or four casts of the lead, about as far as one can throw it. We get about three or four of those casts in the shallowest water and then we are out in deep water again. The shallowest water at that time was about twenty-five or twenty-six feet of water at that time, it all depends on the heighth of the tide, some use larger and some smaller. The last hour before high tide is the best time to cross the bar. If you have a good-sized vessel to take across you would usually take the last hour to cross. We usually try to cross within an hour or a half hour of high water, it all

(Testimony of George V. Sanborn.)

depends on the size of the vessel but the last hour don't raise it.

I have known Captain Chris. Olson sixteen or seventeen years. He was working here when I came and I don't know how long before. (P. 97.)

Upon redirect examination, he said:

I would think Captain Olson is a capable captain or navigator. I would say he was as good a navigator as I would want to pick up anywhere. This is the log of the "Traveller." These entries were made by me at the time in this log and that of October 18th; yes, sir.

Mr. MORGAN.—I will read into the record that of October 17th, Monday, October 17th, 1910: "October 17th, 6 A. M. left Hoquiam for sea, towed boat "Jane L. Stanford" from off mud to safe anchorage. Gave "Stanford" water. Came to Hoquiam. Wind southeast, stormy, bar moderate." "October 18th, 7 A. M., left Hoquiam for sea, cruised off bar for four hours, nothing in sight, came to [101] Hoquiam, 2 P. M. Gave "Stanford" water again, wind southeast, light, bar rough." Well, I suppose the occasion of giving the "Stanford" water was that they needed it. I don't know what they used it for. (P. 98.) I don't know what the occasion was for giving her water on two successive days. No, sir; nothing was said by Captain Petersen at that time about requiring an extra supply of water for his steam pumps in order to keep his steam pump going.

(Testimony of George V. Sanborn.)

Upon recross-examination, he said:

When there is a heavy storm outside, it is stormy inside. We have just a swell inside. I call a moderate bar half way between rough and smooth, breaking occasionally. On a moderate bar there would be less swell inside, I suppose. If we have a real rough bar it is smooth inside because the bar cuts the sea down, that is the way it acts from my experience and with a moderate bar the sea comes in a good deal and if it is a smooth bar there is no sea inside. That (the log) doesn't tell how long we were engaged in towing the "Stanford" to anchorage. I don't remember what time we came to Hoquiam. (P. 99.) We *we* didn't cruise outside until dark. We figured on a tow. We don't ususally tow on an ebb tide, if it is rough. If we didn't see nothing outside we go in and if it is foggy we stay out longer, but if it is clear and nice and we don't see any vessels around we go in. It takes about two hours or an hour and three-quarters to come to Hoquiam on a flood tide.

On redirect examination, he said:

I have been master of the tug "Printer" at different times. That is the tug "Printer's" log-book. (P. 100.) That is part of the record on board the "Printer." Referring to the entry of [102] October 17th, I know whose writing that is. It is Captain Erickson's. Captain Erickson is another one of the Grays Harbor Tugboat Captains or was at that time. He is not now employed by the company. He is on the sound now, I think at Bremerton. Yes, sir, I pulled the "Stanford" off the sandspit on October

(Testimony of George V. Sanborn.)

17th, 1910 according to the log of the boat. Yes, I think the entry in the log of the tug "Printer" of October 17th is in the handwriting of Captain Erickson.

Mr. MORGAN.—At this time we read into the record the entry of the log of the tug "Printer" of October 17th, 1910: "Left Hoquiam 6 A. M., for sea, bar too rough to tow schooner to sea, toward barge "J. Drummond" from Jetty dock to anchorage, barge "Big Bonanza" from Aberdeen to Jetty, tug moves barges to Jetty, tug returned to Hoquiam 7:30 P. M. Stopped on her way to Hoquiam alongside "Barkentine Stanford," the sailors had mutinied on board. Wind southwest.

WITNESS.—This entry of October 25th is Captain Erickson's. It is an entry made in the usual course of entries in this book. This is a book which has been in my charge at different times as master of the tug "Printer."

Mr. MORGAN.—We now propose to read into evidence the following entry in this book: "October 25th. Left Hoquiam 7:30 A. M., for sea and towed schr. "M. Turner" from Buoy 2½ to Hoquiam. Towed Schr. "Americana" from Tank 5 to sea. Passed over bar 4 P. M. Returned to Jetty 5:30 P. M. Bar smooth. Wind N. W. Weather fine." (P. 103.)

Testimony of William King, for Respondent.

I am chief engineer of the "Daring."

I have been on the boats of the tugboat company for 25 years.

(Testimony of William King.)

I recall the time the "Stanford" went on the sand-spit. [103] I was on the "Traveller."

I recall furnishing them water twice.

When we pumped the water to them, I asked them what they were doing with all that water, and he said they were running their steam pump. (Page 116.)

He said they were running their pumps when the tugboats were not in sight. I think this was after they went ashore.

On cross-examination.

The sailors told me they were running the steam pumps.

There were three or four of them standing there.

They told me they ran it only when we were out of sight.

They only ran it when we were not around.

I got their word for it; yes, I suppose the vessel was leaking. (Page 118.)

Captain Sanbern, in response to an inquiry as to vessels that went ashore inside the harbor:

The "Lizzie Vance" was water-logged down there.

It was a three-masted schooner. (Page 123.)

The place where the "Stanford" went ashore was as bad as any.

The barkentine "S. G. Wilder" received injuries.

The "S. C. Allen," she was a barkentine, received injuries.

The "Minnie E. Kane" lost her shoe; that was a four-masted schooner.

I say that it is possible that when the "Stanford" received the injuries to her shoe, it was likely to have

(Testimony of William King.)

been caused by going ashore on the sandspit. (125.)

[104]

On the 25th day of June, 1917, the deposition of R. Peterson, libelant, was taken before A. C. Bowman at Seattle, Washington, at which time R. Peterson testified as follows:

Deposition of R. Peterson, in His Own Behalf.

My name is Robert Peterson. I am master mariner. Master of the barkentine "Jane L. Stanford" at the present time. I am the libelant in this case. I have been master of the "Jane L. Stanford" since the time of the accident involved in this case, except—I stayed home one trip; I was sick; about three or four years ago. The "Stanford" is at Vancouver, British Columbia. She is loaded for a voyage to South Africa; from there to Manila and then to San Francisco. I am going as master on this voyage. I figure she will be loaded tomorrow night or Wednesday forenoon. She will be ready to go as soon as we get men to fill the crew. I figure if we make the voyage it will take about eleven months to get back to an American port. It might take more.

I stayed with the vessel, or continued in business connection with the vessel during the time the repairs to the damage were being made, and I handled the cargo while she was in the Columbia River. There is a firm or company known as Brown & McCabe. It is a stevedore company in Portland. They were my ship brokers, and they were agents for me also. With regard to the repairs of the vessel, they

(Deposition of R. Peterson.)

were furnishing money and paying the bills. They furnished all the material and all the labor, and handled the cargo; took it out and put it in. Of the cargo, there was taken out—I cannot remember how much we had left in the vessel, but I think somewhere around a couple of hundred thousand feet we left in her. We had about the average a little over eleven hundred thousand aboard. But I cannot say exactly, it is so long ago. When we left the loading port we had a full cargo. When the cargo was put back in the vessel some was damaged. It was estimated what was broken. There is always more or less lumber that gets [105] broken in taking out and in. That is all there was damaged. There was nothing else but what little was damaged and broken from taking out and in to the vessel through handling it. I could not remember how much was damaged, but it was not a great deal. I could not remember that. There was nothing done about that damaged cargo; the freight was taken off that part of the cargo; as far as I know there was nothing else done.

With reference to an accounting for the damaged lumber between the owner of the ship and the owner of the cargo, I would not say for sure. The insurance agent, Captain Crowe, was in Portland and got figures on what we were short, but I could not state the amount; it is impossible because in fact I haven't thought much of this case lately, it is so long ago.

Q. Captain, according to the report of the average adjuster, there was 10,258 feet of the cargo that was

(Deposition of R. Peterson.)

left out and not put back. Do these figures come to your mind?

A. I could not state the exact amount. I know it was not a great quantity; I know that.

Q. Was it as much as ten thousand feet?

A. Yes, I thought it was more.

Witness' attention is called to a bunch of attached papers. Witness looks them over. Witness identifies vouchers as follows: Voucher of P. L. Cherry; James Keating; Ross, Higgins & Co.; testifying as to each that they were paid by Brown & McCabe.

Witness then identifies voucher of Robert Peterson for \$50.00, testifying: That is for expenses; my personal expenses while lying there. That was for car fare and meals and many other expenses. I got the money from Brown & McCabe. Yes, that [106] *that* was my expense and I drew that to cover that.

Witness then identifies vouchers of Brown & McCabe for \$25.00; Anderson & Crowe for \$12.50; and Anderson & Nelson for \$4.00.

Witness then identifies voucher of John Grant for \$250.00, and testified as follows: Well, that was for getting the men. When we ship sailors, you know, we have to pay a certain amount for each of them. The crew I shipped in Aberdeen, as soon as I came in there (Portland) cleared out, they went away, so I had to get a new crew when I was going out. The crew that was in the vessel left me. Yes, they went away. And we pay so much advance and we pay so much for brokers—for procuring them, and they were only on board a few days after we got in, so

(Deposition of R. Peterson.)

we had to get a new crew. This \$250.00 that was paid to John Grant was not paid for wages. No, for procuring the men. You see they get so much a man. That is what we used to call blood-money. That is really what it is. We pay sometimes twenty-five dollars and sometimes as high as seventy-five dollars. All depends on how times are. At the present time we pay almost anything to get men to go with us. Yes, that is a necessary expense for a ship to go on a voyage. We cannot do without it. We could not get the men any other way.

Witness then identified vouchers of Brown & McCabe for \$54.17; Brown & McCabe for \$1,936.35; Port of Portland, \$235.36; C. F. Beebe & Co., a chart, \$.25; Port of Portland, \$692.70; Albert Crowe for \$90.00; of a custom-house fee for \$2.50; a voucher of James Keating for \$9.00; a voucher of the Vulcan Iron Works for \$6.40; a voucher of Geo. A. Nelson for \$15.00; a voucher for telephone service of \$1.40; a voucher of the Astoria Iron Works for \$7.75; a voucher of Hageman & Foard Co., for \$255.51; a voucher of \$5.00 for making marine protest; a voucher [107] of \$.25 for a chart; a voucher to John Redding for \$3.00; a voucher to John A. Stephens for \$15.00; a voucher to C. L. Johnson for \$28.80; a voucher of \$453.00 as labor for calkers, carpenters and laborers; a voucher of the Oregon Dry Dock Co., for \$1161.85; a voucher for the Postal Telegraph Co., for \$.53; a voucher of the Pacific Lumber Inspection Bureau for \$18.50; a voucher of W. A. Pratt for \$42.50; a voucher for L. E. Drumm

(Deposition of R. Peterson.)

for \$222.69; a voucher of Brown & McCabe for \$623.17; a voucher of \$1.00 for the Hasty Messenger Co.; a voucher of \$1.10 for the Hasty Messenger Co.; a voucher of Ross, Higgins & Co., for \$6.60; a voucher of Allen & Lewis for \$151.54; voucher of J. A. Stephens for \$28.95; voucher for John Grant for \$174.05; voucher for American Marine Paint Company for \$160.00; voucher of Frank L. Smith for \$50.28; voucher of John Redding for \$3.50; voucher of C. Carlson for \$7.25; voucher of J. Swanson for \$20.00; voucher of Boston Packing Company of \$15.63; voucher of Western Union Telegraph Co., for \$.87; voucher for wages paid while vessel was in Portland, \$627.83; voucher for \$153.77 for shortage of lumber and freight on the same.

Continuing, witness testified: I do not recollect the rate that the ship was chartered for. I could tell you if I had a look at my book. If I am not mistaken, it was 57/6. But I cannot say that at all. I do not recollect how many days the ship was detained by this accident. It was between one and two months. How long, I could not say, but I think it stands down there in that list of the wages. October 26th to December 17th, inclusive. That was the time I was detained. After we got away and resumed the voyage the vessel made her ordinary and usual time in reach her port of discharge. We made the average trip over there to Brisbane. I was in command of the "Jane L. Stanford" on the voyage immediately preceding this one. It was an average voyage time for that voyage. I cannot tell you how

(Deposition of R. Peterson.)

much [108] the ship earned on that voyage without looking in my books. I could tell you if I looked it up in my books. I could not tell you offhand. I know she earned money right along. Take the next voyage after this one on which the accident happened,—I loaded in Aberdeen, if I am not mistaken. We carried the cargo to Chili. It must have been to Chili. Most of the time I was running down there. There was nothing that I recollect that was unusual on that voyage to delay me. I haven't had any delays or anything that I know of, except over on the Sound last year. With reference to the second voyage after the accident, I recollect that they were pretty near all the same right along. There has not been much difference in any of them. Average trips. Nothing coming up, one way or the other. I do not know of any other fact or circumstance connected with the case, that is material for either the libelant or the respondent. To my knowledge I do not know of any.

On cross-examination, he said:

I have been master of the "Stanford" between eight and nine years. I do not now recollect what port I came from into Grays Harbor. Brown & McCabe, the agents of my owners in Portland, made all the payments except what I made myself. I paid them by draft. All the payments were made either by me or by Brown & McCabe. I testified to \$50.00 for myself. This was for expenses in port. Personal expenses. That was for attending to all the different expenses I had while I was there. I had

(Deposition of R. Peterson.)

to go up to Portland and all around and it was not half enough. I should have had \$100.00. It was for carfare and automobile hire and hotel bills and everything, as expenses.

Testifying on cross-examination concerning the voucher for \$250.00 paid to John Grant, he said:

My crew left a day or two after I arrived at Portland. We [109] had a few off and on, one or two, probably once in a while, when there was any to be had, to straighten up things. I paid this \$250.00 to John Grant. He is a boarding master. It is a business, like anything else, a thing we have to have. I paid that to him just before I sailed, to get a crew to go to sea with.

On redirect examination, he said:

When I left Aberdeen, my ship was supplied with stores for the voyage. While we were lying in port we used up some stores. We used some all the time, you know. I had my cook aboard. I had a mate on board and I had a sailor on board, and I had a second mate part of the time. When I got my new crew, they came just as soon as the cargo was in and I was ready to leave.

Q. This average adjustment, they have included the wages of 19 sailors for 21 days. Do you think that is right?

A. Well, that was up to the time they were coming into port, I suppose. I don't know, for 19 sailors. I never had 19 sailors. I may have, off and on that would count up to 19. But we only carry eight sailors in the crew. We paid wages to these sailors

(Deposition of R. Peterson.)

of twenty-five or thirty dollars. I am not sure. Something like that.

Witness excused.

Judge HANFORD.—I offer in evidence the vouchers used in the examination of the witness.

The several vouchers marked Libelant's Exhibit "A," attached to and returned with deposition.

[110]

At a hearing before the Honorable EDWARD E. CUSHMAN, Judge, the following proceedings were had:

Depositions of Captain Peterson just referred to, with the exhibits therein referred to, were admitted in evidence.

Testimony of Arthur B. Hedges, for the Libelant.

ARTHUR B. HEDGES, a witness, called and sworn on behalf of the libelant, testified as follows:

My name is Arthur B. Hedges. I live at Portland, Oregon. I am an accountant at the present time; I am not permanently engaged— In the fall of 1910 I was cashier and local manager for Brown & McCabe. Their business was that of stevedores. I recall the circumstances of the barkentine "Jane L. Stanford" coming up the Columbia River to St. Johns for repairs. Brown & McCabe lightered her cargo so that she could go on the drydock. Brown & McCabe handled the disbursements of the expenses of that business. They acted for the captain and owners. I paid all the accounts as soon as they were

(Testimony of Arthur B. Hedges.)

approved by the master, and made up an account against the owners.

(Witness was handed the deposition of Captain Peterson, to which were annexed certain exhibits. Witness looked at exhibits, continuing:)

I recognize these papers. These papers are relating to the disbursements of the "Jane L. Stanford" at Portland. They are receipted bills. I recognize the signatures to those different papers. I was personally acquainted with Captain Albert Crowe. I am able to identify his signature. As far as I can recollect, he approved a majority of these bills for payment. I do not know for whom he acted; I cannot recollect; I should think the owners, but I cannot recollect; I do not know. I believe that Captain Crowe represented the San Francisco Board of Underwriters. I see Captain Peterson's signature on these bills. I recognize the signature. I paid these bills after they were approved by the [111] captain, always. I made out the bill of Brown & McCabe, which appears there containing a number of items. I made that out from the disbursement-book. I kept a memoranda-book called a disbursement-book, and this bill was made out from it. The items in that bill are the same as the voucher O. K.'d by Capt. Peterson. I made the payments by check. The majority of the materials bills I made in cash to the man that represented the firm; in case it was Anderson & Crowell, I would make it to Anderson & Crowell. Brown & McCabe's first bill was \$5,443.15; and the other bill \$2,723.17.

(Testimony of Arthur B. Hedges.)

Those were aggregate amounts actually paid out by Brown & McCabe. Of these items, \$50.00 cash was furnished to Captain Peterson, also an item of \$600.00, and another item of \$1,500.00. These amounts were furnished to the captain and amounted to \$2,150.00. I do not know what he did with that, or any of it. The captain paid some bills. I could not state the amount, nor could I specify the items. I could not state whether there are any items in Brown & McCabe's bill where I billed his items; I know all the bills paid by us were approved by the master and receipted for by the party who receipted the bill; I paid him a check. I paid to the parties who furnished services or materials all of that money, excepting the money that I gave to Capt. Petersen; we paid all the bills as stated here, and the amount paid to the Captain was a separate amount entirely. After these bills were paid, I made up this statement from the disbursement-book, drew a draft, which was approved by the captain, and then presented it to the bank and it was paid. This was a draft against the owners of the vessel. Brown & McCabe got their money on this draft. [112]

On cross-examination he said:

I am not employed by Brown & McCabe at the present time. I am field accountant for the O. W. R. & N. railroad. I am testifying from the papers and not from memory. I do not know anything about what these items were expended for, except as I got it from the bills themselves and from the O. K. of the captain. I do not know as to whether they were

(Testimony of Arthur B. Hedges.)

necessary expenditures or not, or whether they are items arising from this accident on the Grays Harbor bar.

Witness excused.

Testimony of E. ALEXANDER and ROBERT H. LEE, taken at San Francisco, California, on the 21st day of July, 1917:

Testimony of E. Alexander, for Libellant.

E. ALEXANDER, being called for the libellant, testified as follows:

I reside at Forty-eighth Avenue, San Francisco. My place of business is 112 Market Street, Thompson Building. My business is that of the average adjuster. I have been engaged in that business over ten years, in San Francisco. I made up a statement of general average on the "Jane L. Stanford" on the date of March 3, 1911. That had reference to damages received by her in October, 1910, on the Grays Harbor bar. Well, that shows the dates; I don't remember all the dates of all the items, just as it is made up. Any date there is from protests and legal documents.

(Witness is shown a book or document which is entitled "Statement of General Average, Barkentine 'Jane L. Stanford,'" and asked whether it is the statement of general average to which he referred.)

A. Yes, that is my signature at the end of it.

[113]

(Witness' attention is called to pages 46 and 47 of the document and to the item entitled "Adjustment

(Testimony of E. Alexander.)

Committee receive their fee, \$30.00.)

A. That committee is appointed by the Board of Marine Underwriters, who represent all the underwriters doing marine insurance business in San Francisco, and they are authorized and instructed to examine all statements of this character and to make a charge of \$30 for doing that service—a committee of three underwriters. That charge is made under the rules and regulations of the board and is the usual and customary fee.

(Witness' attention is called to the item, "Adjuster receives adjustment fee, \$100," and asked what that item is.)

A. That is for my services in drawing up this statement, and all the necessary work connected therewith. That is for drawing this statement of general average on the "Jane L. Stanford." That is a usual and reasonable fee for these services. I was going to say, of course, the fee varies with the size and amount of work to be done; in some cases it is small and some cases large. This fee, I may say also, is approved by this committee, who examine the adjustment. This adjustment committee for the underwriters always objects to any charge that is an overcharge, and they have approved this charge as being proper and reasonable for the service rendered.

(Witness' attention is called to item, "Printing adjustment, \$30.80".)

A. That is the Dakin Publishing Company, who are printers, charged \$30 for printing this adjust-

(Testimony of E. Alexander.)

ment. That page is a resume. Yes, I mean this page 46, showing the ship owner how he stands. [114]

(Witness' attention is called to item, "Settling agents receive commission for collecting and settling general average, \$257.27," and is asked to explain that item.)

WITNESS.—This is a summary, of course, of the different items that appear over here in the former part of the statement. Now, this is under the head of "General Average." All the items that come under the head of this statement must be in accordance with the law; otherwise, there will be no claim against the underwriters. This item, amongst other items, is allowed by the law and custom of San Francisco.

Q. Are you referring to the last item on page 42?

A. Yes. 48 is the same thing. This summary need not be in it at all. This states what is claimable in general average according to law, and every item, therefore, in this column, must be substantiated by law, otherwise it falls to the ground. I am referring to the column headed "General Average" on the various pages ending with average adjustment on page 43. Now, on pages 46 to 49, I have a summary of the preceding pages. The disposition of all the previous items in the former part of the statement, showing what falls upon the ship owner, and showing what the net result will be to him of this adjustment, and the same in respect to the cargo owners and the other parties mentioned in that section.

(Testimony of E. Alexander.)

This \$257.26 is a fee. That is payable to the ship-owner, for different work; for attending to the general average matters and collecting contributions, as shown on page 42. It is a legal charge. The charge of \$30.80 for printing adjustment is a reasonable and proper charge, of the Dakin Publishing Company in all cases. [115]

Mr. GRIFFITHS.—I will offer this statement of general average of the barkentine “Jane L. Stanford” in evidence as Libelant’s Exhibit “A,” Alexander.

Mr. RICHTER.—I make objection to the offer on the ground that no proper foundation is laid for the exhibit, irrelevant and incompetent.

Deposition of Robert H. Lee, for Libelant.

On Tuesday, July 24, 1917, the deposition of Robert H. Lee, on behalf of the libelant, was taken at San Francisco, Cal.

Mr. Lee testified as follows:

My name is Robert Henry Lee. My address is 112 Market Street; my home address is Palo Alto, California. I am in the wholesale lumber and shipping business. I am connected with the S. E. Slade Lumber Co. The S. E. Slade is the owner of the barkentine “Jane L. Stanford.” The Slade Lumber Co. is a corporation. I am assistant secretary. I have held this office since prior to 1908. I am familiar with the receipts and expenditures of the vessels employed by the company, the vessels managed by the company.

(Deposition of Robert H. Lee.)

Mr. Lee then testified in detail and at length, tending to show in detail and at length upon direct cross and redirect examination, the fact that on the trip immediately preceding the accident in question the "Jane L. Stanford" earned a net profit of \$12.64 per day. That on the voyage immediately following the one in which the accident happened, the "Jane L. Stanford" earned a net profit of \$18.13 per day. That on the second voyage immediately following the one in which the accident happened, the "Jane L. Stanford" earned a net profit of \$21.17 per day.

Testimony closed. [116]

**Certificate of Honorable E. E. Cushman, Judge U. S.
District Court, Re Statement of Evidence, etc.**

State of Washington,
County of Pierce,—ss.

I, E. E. Cushman, Judge of the United States District Court for the Western District of Washington, Southern Division, and the Judge before whom the foregoing cause of R. Peterson, Libellant, vs. Grays Harbor Tugboat Company, Respondent, was heard and tried, do hereby certify that the matters and proceedings embodied in the foregoing transcript of testimony are matters and proceedings occurring in the said cause, and that the same are hereby made a part of the record; and I further certify that the said transcript, together with all of the exhibits and other written evidence on file in said cause, and attached to said transcript, contains all the facts material under the stipulation of the parties of the mat-

ters and proceedings heretofore occurring in the said cause, and not already a part of the record therein; that said transcript, with the exhibits attached thereto, are hereby made a part of the record in said cause, the clerk of this court being hereby instructed to attach all the exhibits hereto. Counsel for the respective parties being present and concurring herein, I have this day signed this Bill of Exceptions.

IN WITNESS WHEREOF I have hereunto set my hand this 22d day of November, A. D. 1917.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western District of Washington, Southern Division. Oct. 19, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Refiled in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 22, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [117]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

IN ADMIRALTY—No. 858.

R. PETERSON,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a Cor-
poration, et al.,

Respondents.

Notice of Appeal.

To the Above-named Libelant, and to His Attorneys,
Page, McCutcheon, Knight & Olney, and Ira A.
Campbell, and E. C. Hanford, and C. H. Han-
ford:

You, and each of you, will please take notice that the respondent herein hereby appeals from the final decree made and entered herein on the 19th day of October, A. D. 1917, and from each and every adverse order and finding heretofore entered in said cause, to the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in and for said circuit in the city of San Francisco, in the State of California, in said circuit.

Dated at Hoquiam, Washington, November 19th,
A. D. 1917.

MORGAN and BREWER,
Proctors for the Grays Harbor Tug Boat Company,
Respondent and Appellant.

Filed in the U. S. District Court, Western Dist. of
Washington, Southern Division. Nov. 22, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [118]

I hereby acknowledge receipt of copy of the within
Notice of Appeal, also Petition for Appeal, at
Seattle, Washington, this 23d day of Nov., 1917.

C. H. HANFORD,
Proctor for Libelant.

Refiled in the U. S. District Court, Western Dist.
of Washington, Southern Division. Nov. 24, 1917.
Frank L. Crosby, Clerk. By F. M. Harshberger,
Deputy. [119]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

IN ADMIRALTY—No. 858.

R. PETERSON,

Libelant,

vs.

GRAYS HARBOR TUG BOAT COMPANY, a Cor-
poration, et al.,

Respondent.

Assignment of Errors.

The respondent and appellant hereby assign errors in the rulings and proceedings of the Honorable District Court as follows:

1.

For that the Court refused to sustain its exceptions and objections to the libel:

2.

For that the Court erred in the findings of fact recited by it in its memorandum decision of April 16, 1917, for that such findings of fact are not in accord with the evidence in the cause, but are directly contradicted by the testimony in the cause and the evidentiary facts relating thereto, and particularly with reference to the finding that the captain of the respondent's tugboat, or the respondent itself, was negligent in any respect.

3.

For that the Court erred in its conclusions of law as [120] noted in said memorandum decision for

this, that the conclusions stated by the Court do not follow as a matter of law from the facts as found and recited by the Court in said memorandum decision.

4.

The trial court erred in its findings of fact upon which the judgment herein was based, that the captain of the respondent's tug was at fault in undertaking the tow at a time when it was entirely too rough upon the bar for the depth of water, as the preponderance of the evidence, and the evidence as a whole, showed the contrary.

5.

The trial court erred in holding as a matter of law that the burden in this case was upon the respondent to free itself from the blame by reason of the fact that it held as a matter of fact that the tow had been damaged by striking upon the bar while in charge of the tug, as this is contrary to the rule of law under such circumstances.

6.

The trial court erred in finding that the tug of the respondent was guilty of any negligence whatsoever that produced the damage, or any damage, to the tow, as the evidence was wholly to the contrary.

7.

The trial court erred in failing to find that the respondent and the tug exculpated the tug and those in charge of her wholly from any negligence under the circumstances shown by the evidence. [121]

8.

For that the Court erred in entering a final decree

in favor of the libelant and against the respondent in that such decree was not founded upon nor justified by any testimony in the cause, nor was such decree justified by the law flowing from the facts as found by the Court.

9.

The Court erred in that it ordered, adjudged and decreed that the libelant should recover against the appellant the sum of Nine Thousand One Hundred Sixty-nine and 70/100 (\$9,169.70) Dollars, or should recover any sum at all.

10.

For that the Court erred in that it did not make a decree dismissing the libel with costs to this respondent in the District Court.

Dated at Hoquiam, Washington, November 19th, A. D. 1917.

MORGAN and BREWER,
Proctors for the Grays Harbor Tug Boat Company,
Respondent and Appellant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 22, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [122]

*In the District Court of the United States for the
Western District of Washington, Southern Di-
vision.*

IN ADMIRALTY—No. 858.

R. PETERSON,

Libelant,

GRAYS HARBOR TUG BOAT COMPANY, a Cor-
poration, et al.,

Respondents.

**Stipulation Re Transmission of Original Exhibits
and That Same Need not be Printed.**

It is hereby stipulated by and between the libelant by his proctor, C. H. Hanford, and the respondents by their proctors, Morgan and Brewer, that the original map, or maps, and chart, or charts of Grays Harbor may be sent to the United States Circuit Court of Appeals in lieu of copies of such map or maps, and chart, or charts, and that such maps and charts need not be printed in the record.

It is further stipulated that no exhibits other than the maps and charts need be sent to the Circuit Court of Appeals.

It is stipulated by the respondents and appellants that in view of the exclusion of the exhibits relating to accounting, that they make no point as to the sufficiency of the showing as to any items of account covered by such exhibits, or in fact any items of account, except the legal right of the libelant to be reimbursed for moneys paid as a commission for the

procuring of sailors, for moneys paid for the expenses of a general average, and for the allowance of interest for a five-year period. [123]

Dated and signed this 23d day of November, A. D. 1917.

C. H. HANFORD,
Proctor for Libelant and Appellee.
MORGAN and BREWER,
Proctors for Respondents and Appellants.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 28, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [124]

**Certificate of Clerk U. S. District Court to Apostles
on Appeal.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the case of R. Petersen, Libellant, vs. Grays Harbor Tug Boat Company, a Corporation, Respondent, No. 858, in said District Court, as required by praece of proctors for appellant filed and shown herein and as the originals thereof appear on file and of record in my office in said District at Tacoma.

I further certify and return that in accordance with stipulation of proctors for libellant and appel-

lee and for respondent and appellant filed in this court on the 28th day of November, 1917, and shown herein, I hereto attach and herewith transmit a map or chart of Grays Harbor, Washington, marked Libellant's Exhibit "A," G. H. Marsh, U. S. Commr., which is the only map or chart of Grays Harbor filed in said District Court in said cause.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the appellant herein for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

| | |
|--|---------|
| Clerk's fees (Sec. 828, R. S. U. S.) for making record, certificate and return, 310 folios at 15¢ each | \$46.50 |
| Certificate of Clerk to Transcript, 3 folios at 15¢ each and seal | .65 |

ATTEST my hand and the seal of said District Court at Tacoma, in said District, this 13th day of December, A. D. 1917.

[Seal]

FRANK L. CROSBY,
Clerk.

By F. M. Harshberger,
Deputy Clerk. [125]

[Endorsed]: No. 3093. United States Circuit Court of Appeals for the Ninth Circuit. Grays Harbor Tug Boat Company, a Corporation, Appellant, vs. R. Petersen, Appellee. Apostles on Appeal. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed December 17, 1917.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

